NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2007 KA 0455

STATE OF LOUISIANA

VS.

DONALD J. THOMPSON

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JUDGMENT RENDERED: SEPTEMBER 19, 2007

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ON APPEAL FROM THE
TWENTY-SECOND JUDICIAL DISTRICT COURT
DOCKET NUMBER 395878, DIVISION B
PARISH OF ST. TAMMANY, STATE OF LOUISIANA

HONORABLE ELAINE W. DIMICELI, JUDGE

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DONALD J. THOMPSON

DONALD J. THOMPSON
ANGOLA, LA

IN PROPER PERSON
DEFENDANT/APPELLANT

BEFORE: GAIDRY, MCDONALD AND MCCLENDON, JJ.

**MCDONALD, J.**

Defendant, Donald Thompson, was charged by grand jury indictment with two counts of aggravated rape, upon the minor victims A.W. and R.W., violations of La. R.S. 14:42. Defendant entered pleas of not guilty and was tried before a jury. The jury determined defendant was guilty as charged. For these convictions, the trial court sentenced defendant to two consecutive terms of life imprisonment at hard labor to be served without benefit of probation, parole, or suspension of sentences.

After considering defendant's assignments of error, we affirm his convictions and sentences.

## FACTS

Karen Schnadelbach had two children from her first marriage, A.W., who was born on March 14, 1990, and R.W., who was born on September 16, 1991. Following her divorce from her first husband, Schnadelbach, her two sons, and her mother, Carolyn Carter, moved into a residence on Eastwood Drive in Slidell. Schnadelbach's sister (Marie), Marie's husband (defendant), and their son, C.T., who was born on November 21, 1993, also shared this residence.[1]

While everyone lived in the Eastwood Drive residence, defendant and Marie shared the master bedroom, Schnadelbach had a bedroom, Carter had a bedroom, and all three boys shared a bedroom. At first, Schnadelbach was not working, so she was able to remain home and care for her sons and nephew. Eventually, Schnadelbach obtained employment and, in the late

[1] No exact date is provided regarding when everyone moved into the Eastwood residence; however, testimony reflects these living arrangements began when C.T. was approximately six weeks old.

1990's, became engaged and married her current spouse, Scott Schnadelbach.

In 1999, Schnadelbach and her husband purchased a home on West Lawn Drive in Slidell. Schnadelbach explained that her children did not completely move into the West Lawn residence because the boys had friends and still attended school in the Eastwood Drive neighborhood. Schnadelbach's mother would pick up all the children from school everyday and bring them to the Eastwood residence until Schnadelbach got off work. Schnadelbach testified that she frequently allowed her sons to spend nights and weekends there in order to spend time with their grandmother, cousin, and friends in the neighborhood. This arrangement continued for several years.

Stephen Watsey was employed as a counselor at Slidell Junior High School. As part of his duties, Watsey oversaw the Sexual Abuse Prevention and Education Program. This program provided an opportunity for students to view educational videotapes on sexual abuse after their parents granted their permission. Watsey stated that following the viewing of these videotapes, teachers typically informed the students if they wanted to further discuss any of the topics they could request to speak with one of the school's counselors.

In March 2004, after viewing one of these videotapes, R.W. sought and obtained a meeting with Watsey. During this meeting, R.W. revealed that years earlier, while living in the same residence as defendant, that defendant had inappropriately touched him. According to R.W., this behavior began when he was approximately five years old and continued until he was ten years old. R.W. told Watsey that he had mentioned his uncle's behavior once to his mother, but his mother told him not to worry,

and commented defendant was probably intoxicated. R.W. admitted to Watsey that he did not provide his mother with any details of what kind of touching his uncle was doing. R.W. told Watsey that he had also asked his older brother, A.W., if defendant had ever touched him, and A.W. responded that R.W. should not worry because defendant "does that to everyone."

According to Watsey, R.W. expressed fear about the possibility that he might have to return to reside in the household with defendant, and was also worried about being labeled as a homosexual because of what had occurred between he and defendant.

Watsey contacted R.W.'s mother, Karen Schnadelbach, and asked her to come to the school. Watsey assured Schnadelbach that there was no physical emergency, but that he needed to speak with her about R.W. Watsey also had A.W. removed from class and brought to his office so he could speak with him. Once A.W. discovered that his brother had told Watsey of defendant's behavior towards him, he became very upset and expressed fear that such disclosure would destroy their family. Although A.W. was very upset with his brother, he never accused him of lying.

Once Schnadelbach arrived at the school, Watsey met with her privately to give her a basic explanation of why she was there. R.W. then came back into the room and told his mother that defendant had been inappropriately touching him. According to Watsey, Schnadelbach became very upset and anxious. A.W. was brought back into the room and shortly thereafter Schnadelbach left with her sons.

Watsey felt that R.W.'s allegations were credible and he fulfilled his obligation to report them to the Office of Community Services (OCS), Child Protection. Watsey also advised Schnadelbach to report these allegations to the police. The following day, Schnadelbach took R.W. to meet with

Detective Chuck Tabor of the Slidell Police Department. After interviewing R.W., Detective Tabor set up an appointment for him at the Children's Advocacy Center (CAC), so R.W. could speak to someone at their Hope House facility.

Jo Beth Rickles, of the CAC in Covington, interviewed both R.W. and A.W. The videotapes of these interviews were played for the jury at trial. During R.W.'s interview, he described how defendant would frequently come into his bedroom and touch R.W.'s penis. R.W. also told Rickles that defendant had put his penis inside R.W.'s mouth on several occasions when R.W. was approximately eight years old. R.W. described one incident where defendant attempted to put his penis inside R.W.'s butt, but R.W. stated he was able to block defendant from doing so. R.W. told Rickles that these episodes mostly occurred after defendant returned home from being out drinking.

When Schnadelbach attempted to speak to A.W. about whether defendant had done anything inappropriate with him, A.W. would tell his mother that he did not want to talk about it. In the days following R.W.'s disclosure, A.W. eventually admitted to his mother that defendant had done things, but he would not elaborate. A.W. also gave a statement to Detective Tabor and an interview to a counselor at the CAC, although A.W. only disclosed that defendant had fondled him.

Defendant was subsequently arrested and charged with molesting his nephews. During the investigation, R.W. and A.W. were each examined by Dr. Scott Benton, who was recognized at trial as an expert in forensic pediatrics. During these interviews, both R.W. and A.W. disclosed to Dr. Benton that defendant had fondled them, and orally and anally raped them multiple times over a span of years when they lived in the same residence as

defendant.[2] Dr. Benton's examinations noted that there were no physical signs of sexual abuse on either boy. Dr. Benton explained that such a lack of physical finding does not eliminate the fact that the abuse may still have occurred. In his experience, given the length of time from the occurrence to the exam, he did not expect to see any physical effects since injury from anal rape generally resolves within a week of the event.

R.W. testified at trial. R.W. testified that when he lived in the house on Eastwood Drive, defendant would touch him in a bad way, which he explained involved touching of his private parts. According to R.W., this behavior began when he was approximately five years old and continued until he was ten. R.W. stated that this occurred many times, usually in R.W.'s bedroom or the toy room, or in defendant's bedroom.

R.W. described how defendant put his penis into R.W.'s butt, and that it caused pain. R.W. also described how defendant ejaculated on his face and butt, and that sometimes his brother and cousin were also in the room. R.W. testified that once, while all the boys were in the toy room, defendant came in with covers wrapped around him and laid behind R.W. Defendant placed the covers on R.W. and R.W. realized defendant was naked. Defendant then began to grab R.W.'s penis. R.W. testified that other times, defendant would come into the boys' bedroom, while A.W. and C.T. were asleep, and get into R.W.'s bed and anally rape him. R.W. also described an incident that occurred in defendant's bedroom, where defendant asked him to come into the bedroom to look at a racetrack he had set up. After R.W. went into the room, defendant anally raped him.

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[2] During the investigation of the offenses involving A.W. and R.W., defendant's own son, C.T., was removed from his residence. The jury was not presented with any charges arising from defendant's actions involving C.T.

At trial, R.W. testified that after these episodes, he would feel "dirty" and would go to the bathroom to take a bath or wash his hands and face. R.W. stated that a couple of times his grandmother inquired what he was doing. After he responded that he did not feel clean, his grandmother told him to go back to sleep. Although he initially reported to Detective Tabor that defendant committed these acts between 7:00-8:00 p.m., at trial, he testified that they usually occurred around midnight or 1:00 a.m., after his aunt had fallen asleep.

R.W. testified that he never told anyone about what was happening because he was afraid of the consequences. R.W. stated that he thought defendant was doing these things as some type of punishment and that if he told anyone he would get into more trouble. R.W. testified that he saw defendant get into both C.T.'s and A.W.'s beds with them.

Detective Tabor testified that according to his experience, sexual-abuse victims are very reluctant to discuss what has happened to them. When Detective Tabor first encountered R.W., he seemed very reluctant to speak with him. In this encounter, Detective Tabor merely sought to establish the basics of the complaint, then he set up an interview for R.W. at the CAC, so a more detailed account could be obtained.

Detective Tabor also interviewed A.W., who specifically said he did not want to cause disruption to his family. A.W. was interviewed a second time, wherein he acknowledged that defendant had abused him. Eventually, Detective Tabor also interviewed C.T., who reported that his father would place his hands inside C.T.'s clothing and squeeze his buttocks.

Detective Tabor testified that none of the boys ever recanted their complaints about defendant's actions. Detective Tabor also explained that there are always inconsistencies in what children report. According to

Detective Tabor, R.W. relayed to him that the abuse was occurring three times a week between 7:00-8:00 p.m., however, Detective Tabor testified that based on his experience, children oftentimes do not present an accurate concept of time.

C.T., defendant's son, who was thirteen years old at the time of trial, also testified. According to C.T., defendant would touch him inappropriately, usually while C.T. was lying in his bed. C.T. described how defendant would lay behind him in his bed, reach into his pants, and rub his legs and butt. According to C.T., this usually lasted about fifteen minutes, but only happened one or two times, when he was approximately ten years old.

A.W. testified that defendant did things to him in the bedroom the boys shared and in the playroom of the Eastwood residence. A.W. stated that defendant began to touch him when he was six years old and continued until he was twelve years old. A.W. described how defendant would put his hand on A.W.'s penis, put his mouth on A.W.'s penis, and made A.W. put his mouth on defendant's penis and how defendant anally raped him. A.W. testified that the anal rapes began when he was about six years old.

A.W. admitted that he failed to tell Detective Tabor about the anal rapes, but only disclosed that defendant had touched him. A.W. admitted that he did not want to go through the ordeal of reporting the abuse because he wanted his life to be the way it was. A.W. explained by the time he was examined by Dr. Benton, which was several months following the initial disclosure, he was more comfortable speaking about it with Dr. Benton. As a result, A.W. disclosed that defendant had done more than touch him, and had actually orally and anally raped him.

The defense presented testimony from Frank Buffone, who had been friends with defendant since they attended high school. The two men had maintained their friendship and spent a lot of time together, which included many gatherings at defendant's home. Buffone testified that he and defendant played in a dart league three nights a week, usually from 6:30 to about 11:00 p.m. Buffone stated that defendant also worked as a firefighter in New Orleans, which required him to be at the fire station every third night. According to Buffone, neither A.W. nor R.W. appeared afraid of defendant.

The defense also presented testimony from Kathleen Vincelette and Holly Markert, who frequently socialized with defendant and his wife. Their testimony centered on how often defendant hosted social gatherings at his own home, which included their children, or was frequently not home because of his activities in the dart league.

Marie Thompson, defendant's wife, testified that she never saw defendant get into a bed with his nephews, and that the door to the boys' bedroom was never completely closed. Marie Thompson testified that neither of her nephews ever behaved in a manner that would indicate they feared defendant. Thompson also testified that given the layout of the Eastwood residence, she would have been able to hear water running in the boys' bathroom, however, she never heard water running in the middle of the night.

Defendant testified that at the time of his arrest, he worked as a firefighter for the City of New Orleans and held a second job at Sign Lite, an electrical-sign company. Defendant claimed that he financially supported his own family, Schnadelbach and her sons, and his mother-in-law. Despite such support, defendant's testimony indicated that there were strained

relationships between he, his mother-in-law and Schnadelbach for a lengthy period before the present charges were filed.

Defendant testified that his schedule with the fire department required that he work a twenty-four hour shift, and then he was off for the next forty-eight hours. Because of this schedule, defendant was not present at his house every third night. On the evenings he was not home, defendant claimed that he would leave his job at the sign company, pick up C.T. from school aftercare shortly before 6:00 p.m., have dinner at home, then leave to participate in the dart league. Defendant claimed he was usually out quite late before his wife joined the league. After his wife joined the league, defendant claimed they usually went home after the league finished at 10:30 p.m.

Defendant admitted he "pinched" C.T. on the butt "quite a few times," but believed that C.T. had been pressured into describing the acts as something else. Defendant denied he ever touched, molested or raped A.W. or R.W., and claimed that they had been "brainwashed."

**SUFFICIENCY OF THE EVIDENCE**

In his sole assignment of error, defendant argues that the evidence is insufficient to support his convictions for aggravated rape. Defendant contends that neither victim reported the incidents to their relatives; both victims admitted lying to the police on several occasions; there was no medical evidence supporting the allegations; and the victims' mother testified that she always had a strained relationship with defendant.

In reviewing claims challenging the sufficiency of the evidence, this court must consider whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. **Jackson v.**

**Virginia**, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979); La. C.Cr.P. art. 821(B).

In the present case, the indictment charges that the crimes occurred between January 1, 1996 and December 31, 2003. Louisiana Revised Statute 14:42, prior to amendment by 2001 La. Acts No. 301, § 1, provided, in pertinent part:

> A. Aggravated rape is a rape ... where the anal ... sexual intercourse is deemed to be without lawful consent of the victim because it is committed under any one or more of the following circumstances:
> * * * * *
> (4) When the victim is under the age of twelve years. Lack of knowledge of the victim's age shall not be a defense.

During the time period in which these crimes were committed, 2001 La. Acts No. 301, § 1 amended the definition of rape in La. R.S. 14:41(C) to include oral sexual intercourse committed without the person's lawful consent. Oral sexual intercourse was defined as:

> (1) The touching of the anus or genitals of the victim by the offender using the mouth or tongue of the offender.
> (2) The touching of the anus or genitals of the offender by the victim using the mouth or tongue of the victim.

By 2001 La. Acts No. 301, § 1, La. R.S. 14:42 (A) was also amended to include oral sexual intercourse.[3]

The jury clearly rejected the defense that defendant never had the opportunity to commit these crimes according to R.W.'s initial disclosure that they occurred between 7:00-8:00 p.m. Both Detective Tabor and Dr. Benton testified that children are inaccurate when it comes to providing a time frame for an incident. R.W.'s interview with Rickles and his trial testimony established that these episodes often happened after defendant

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[3] During the period of time in which these crimes were committed, January 1, 1996-December 31, 2003, La. R.S. 14:42 was also amended by 1997 La. Acts No. 757, §1; 1997 La. Acts No. 898, §1, and 2003 La. Acts No. 795, §1; however, none of these amendments are relevant to the issue presented in this appeal.

returned home from drinking, and it was sometime around midnight. Moreover, A.W. admitted he went along with R.W.'s initial report of when these incidents would happen because he did not want to be in Detective Tabor's office.

Defendant also argues that the evidence is insufficient because neither A.W. nor R.W. told any family member what was happening. The State presented testimony from Dr. Benton, the expert forensic pediatrician, explaining how many factors affect if or when children disclose sexual abuse. According to Dr. Benton, the closer the relationship between the abuser and the victim, the greater the probability the disclosure will be delayed because sometimes children develop skills that allow them to accommodate the abuse, or they have a desire for the family to remain intact. Dr. Benton further testified that sometimes children are not aware that a certain behavior is abnormal and thus they cannot disclose something that they do not perceive as wrong. Dr. Benton also explained that sometimes the adult abuser influences the child, through threat or bribery, to maintain the secrecy of the abuse. Internal factors, such as the fear of not being believed or fear of embarrassment, also play a role in a child's disclosure of sexual abuse.

Dr. Benton testified at length regarding the concept of sequential disclosure and explained that this often occurs when an individual has a vested interest in maintaining secrecy about something, sometimes to avoid embarrassment. According to Dr. Benton, children who have been sexually abused want to report it, but are concerned with the consequences that follow such disclosure. As a result, children initially limit what they reveal to observe the reaction of the listener. As the child grows more comfortable, they often reveal more details about what they have experienced.

R.W. testified that he was not aware that defendant's actions were improper until he viewed the educational videotape at school. According to R.W., he thought defendant's actions were a form of punishment and did not want to tell any of the other adults in the house for fear he would receive more punishment.

A.W. testified that he did not want to tell anyone about what was happening because he was fearful of the effect it would have on his family. A.W. explained he was reluctant to disclose everything to Detective Tabor because he wanted "life to be the way it was." A.W. further testified he was more comfortable speaking with Dr. Benton.

The verdicts rendered against defendant indicate the jury accepted the testimony of the State's witnesses, including the accounts provided by the victims, A.W. and R.W., and rejected defendant's testimony. This court will not assess the credibility of witnesses or reweigh the evidence to overturn a fact finder's determination of guilt. Victim testimony alone is sufficient to prove the elements of the offense. The trier of fact may accept or reject, in whole or in part, the testimony of any witness. Moreover, when there is conflicting testimony about factual matters, the resolution of which depends upon a determination of the credibility of the witnesses, the matter is one of the weight of the evidence, not its sufficiency. **State v. Lofton**, 96-1429, p. 5 (La. App. 1st Cir. 3/27/97), 691 So.2d 1365, 1368, writ denied, 97-1124 (La. 10/17/97), 701 So.2d 1331.

After a thorough review of the record, we are convinced that viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found beyond a reasonable doubt that defendant was guilty of the aggravated rapes of A.W. and R.W.

This assignment of error is without merit.

## INEFFECTIVE ASSISTANCE OF COUNSEL

Defendant filed a pro se brief arguing that the trial court failed to recognize that his convictions were the direct result of ineffective assistance of counsel. In brief, defendant argues that his original trial counsel failed to conduct an investigation of his case, failed to pursue discovery, failed to interview any potential witnesses, or contact the defense witnesses whose names were given to him by defendant; and failed to hire an expert witness to rebut the expert testimony of the State's expert.

We find this assignment of error regarding ineffective assistance of counsel cannot be sufficiently investigated from an inspection of the record alone. The claims are best considered in their entirety by the trial court in an application for post-conviction relief. It is well settled that allegations of ineffectiveness of counsel relating to decisions involving investigation, preparation, and strategy cannot possibly be reviewed on appeal. Only through an evidentiary hearing in the district court, where the defendant could present evidence beyond that contained in the instant record, could these allegations be sufficiently investigated.[4] Accordingly, this assignment of error is not subject to appellate review. **State v. Johnson**, 2006-1235, p. 12 (La. App. 1st Cir. 12/28/06), 951 So.2d 294, 302-03.

**CONVICTIONS AND SENTENCES AFFIRMED.**

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[4] The defendant would have to satisfy the requirements of La. C.Cr.P. art. 924 *et seq.* in order to receive such a hearing.