NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2008 KA 1894

STATE OF LOUISIANA

VERSUS

EHAB AHAB MOHAMED

Judgment Rendered: ***March 27, 2009***

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ON APPEAL FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF ST. TAMMANY
STATE OF LOUISIANA,
DOCKET NUMBER 435983 "J"

THE HONORABLE WILLIAM J. KNIGHT, JUDGE

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BEFORE: PETTIGREW, McDONALD, HUGHES, JJ.

Hughes, J., concurs.

McDONALD, J.

The defendant, Ehab Ahab Mohamed, was charged by bill of information with forcible rape, a violation of La. R.S. 14:42.1. The defendant pled not guilty. After a trial by jury, the defendant was found guilty as charged. The defendant was sentenced to seventeen years imprisonment at hard labor, the first two years to be served without the benefit of probation, parole, or suspension of sentence. The defendant now appeals, assigning error to the trial court's admission of other crimes evidence and the trial court's denial of the motion for post verdict judgment of acquittal, motion for new trial, and motion to reconsider sentence. For the following reasons, we affirm the conviction and sentence.

STATEMENT OF FACTS

On or about January 26, 2007, the defendant, who was a manager of a Covington, Louisiana International House of Pancakes, Inc. (I.H.O.P.) restaurant at the time, took A.P. (the victim), a subordinate employee in need of a means of transportation, to a car dealership in Slidell, Louisiana to look for a vehicle to purchase.[1] After they left the dealership, the defendant ultimately took the victim to his apartment in Cypress Lakes Apartments in Mandeville, Louisiana. The events that took place in that apartment are in dispute.

According to the victim, before the defendant took her to his apartment, she asked him to take her home but he did not. The victim further alleges that she did not initially enter the apartment, but ultimately did so after failed attempts to use her cellular telephone to contact someone to pick her up. After entering the apartment, the victim told the defendant that she wanted to go home. The victim sat on the defendant's sofa and tried to use her cellular telephone again to communicate with a friend. When her cellular communication failed, the victim

[1] Pursuant to La. R.S. 46:1844W(1), initials are used to protect the identity of the victim.

asked to use the defendant's telephone. The defendant refused to give the victim his telephone. The defendant agreed to dial a telephone number for the victim after he dialed "star 67" (*67) in order to block caller identification. The victim questioned the defendant as to why he was preventing identification of his telephone number and noted that her friend would not answer the telephone if the caller was unidentified. The defendant denied further use of his telephone. According to her testimony, the victim demanded to be taken home. At that point, the defendant grabbed the victim and pulled her back down to the sofa. The victim told the defendant to stop several times before he placed his hand over her mouth. The defendant held the victim's hands down and pulled her pants down. The victim further testified, "he went in me." The defendant denied any sexual encounter with the victim.

ASSIGNMENT OF ERROR NUMBER TWO AND ASSIGNMENT OF ERROR NUMBER THREE (IN PART)

In the second assignment of error, the defendant argues that the trial court erred in denying the motion for post verdict judgment of acquittal in that the verdict is not supported by sufficient evidence, viewed in the light most favorable to the State, to permit a finding of guilt beyond a reasonable doubt as to each element of forcible rape. The defendant contends if the other crimes evidence is disregarded, reiterating his belief that such testimony was erroneously admitted, the case consists of one person's word against another without any other evidence. The defendant argues that the alleged victim showed that she had no fear of the defendant when she returned to his home of her own free will on the night in question. The defendant denies the occurrence of sexual intercourse and questions the sufficiency of the evidence of forcible rape even if sexual intercourse did occur. The defendant contends that the testimony of the alleged victim is unsubstantiated and uncorroborated, specifically noting that she washed her

clothing, that there was no evidence of force on her body or of forceful intercourse, and that there was no corroborating evidence in the apartment. In the third assignment of error, the defendant in part argues that the trial court should have granted his motion for a new trial based on his insufficiency of the evidence argument.[2]

In cases such as this one, where the defendant has raised issues on appeal both as to the sufficiency of the evidence and as to one or more trial errors, the reviewing court should preliminarily determine the sufficiency of the evidence before discussing the other issues raised on appeal. **State v. Hearold**, 603 So.2d 731, 734 (La. 1992). The sufficiency issue must be decided first because a finding of insufficient evidence to support the guilty verdict bars the retrial of a defendant based on the constitutional protection against double jeopardy. Thus, all other issues would be rendered moot. **State v. Davis**, 2001-3033, pp. 2-3 (La. App. 1st Cir. 6/21/02), 822 So.2d 161, 163.

On the other hand, when the entirety of the evidence, both admissible and inadmissible, is sufficient to support the conviction, the accused is not entitled to an acquittal, and the reviewing court must then consider the assignments of trial error to determine whether the accused is entitled to a new trial. If the reviewing court determines there has been trial error (which was not harmless) in cases in which the entirety of the evidence was sufficient to support the conviction, then the accused must receive a new trial, but is not entitled to an acquittal. **Hearold**, 603 So.2d at 734. Thus, we must initially determine whether the evidence presented at the trial was sufficient to support the conviction.

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[2] The other argument raised in the third assignment of error will be addressed in the next section with the argument raised in assignment of error number one.

In reviewing the sufficiency of the evidence to support a conviction, a Louisiana appellate court is controlled by the standard enunciated by the United States Supreme Court in **Jackson v. Virginia**, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). That standard of appellate review, adopted by the Legislature in enacting La. Code Crim. P. art. 821, is whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could conclude the State proved the essential elements of the crime and the defendant's identity as the perpetrator of that crime beyond a reasonable doubt. In conducting this review, we also must be expressly mindful of Louisiana's circumstantial evidence test, which states in part, "assuming every fact to be proved that the evidence tends to prove," in order to convict, every reasonable hypothesis of innocence is excluded. **State v. Wright**, 98-0601, p. 2 (La. App. 1st Cir. 2/19/99), 730 So.2d 485, 486, writs denied, 99-0802 (La. 10/29/99), 748 So.2d 1157, 2000-0895 (La. 11/17/00), 773 So.2d 732.

When a conviction is based on both direct and circumstantial evidence, the reviewing court must resolve any conflict in the direct evidence by viewing that evidence in the light most favorable to the prosecution. When the direct evidence is thus viewed, the facts established by the direct evidence and the facts reasonably inferred from the circumstantial evidence must be sufficient for a rational juror to conclude beyond a reasonable doubt that the defendant was guilty of every essential element of the crime. **Wright**, 98-0601 at p. 3, 730 So.2d at 487. When a case involves circumstantial evidence and the trier of fact 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 that raises a reasonable doubt. **State v. Captville**, 448 So.2d 676, 680 (La. 1984).

A reviewing court is not called upon to decide whether it believes the witnesses or whether the conviction is contrary to the weight of the evidence.

State v. Smith, 600 So.2d 1319, 1324 (La. 1992). 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.

The defendant was charged with forcible rape under La. R.S. 14:42.1A(1), which provides in pertinent part:

> 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.

The victim was eighteen years of age at the trial and seventeen years of age when she was a cashier at I.H.O.P., at the time of the offense. The victim did not have a vehicle and would rely on friends to transport her to and from work. She lived in Lacombe, Louisiana, with a friend. The defendant was one of the victim's managers. The fact that the defendant took the victim to his apartment on the date in question is not in dispute. However, the victim testified that the defendant took her to his apartment against her will and despite her requests to be taken home. The victim further testified, "I can't for my life fight him off, because I'm just more little [sic] than him. So I didn't know what to do." When asked what part of the defendant's body was inside what part of her body, the victim responded, "He put his dick in my coochie." She further testified that she cried, was in shock, and could not contact anyone by telephone. The defendant walked out of the apartment and came back in before taking the victim home. The victim spent several subsequent days in her room crying.

The victim ultimately went to the restaurant to pick up her check and told Kristene Haste, an assistant manager at the time, her version of the incident. Haste testified that the victim was very upset, pale, crying, and shaking. Haste also testified that she never observed any behavior between the defendant and the victim to indicate that they were romantically involved. According to Haste, the defendant on occasion committed such inappropriate acts as grabbing her underwear when she bent over and trying to look down her shirt. She further testified that on one occasion she went to the defendant's apartment complex to visit a friend, and visited the defendant at his apartment as her friend was not home. On this occasion the defendant kissed her and she told him that she had a boyfriend. Haste did not go to the defendant's apartment on any other occasion. As elicited during cross-examination, Haste did not report the defendant's behavior.

According to the testimony of, Julie Sciple (the victim's childhood friend) she called the victim on January 30, 2007, after not hearing from her in a few days. Sciple testified that the victim sounded odd and did not want to talk. She finally spoke to the victim in person a few days later. Sciple described the victim as being distressed at that time. After the victim told her about the incident in question, Sciple took the victim to the police to report the incident.

Detective Steve Gaudet of the St. Tammany Parish Sheriff's Office testified that the victim's report was filed on February 3, 2007. Gaudet described the victim as seventeen years of age at the time and petite, specifically, four feet eleven inches to five feet tall, and weighing approximately ninety pounds. A warrant for the defendant's arrest was issued after attempts were made to corroborate the victim's statement including interviews with Sciple, Shelly Solano, Haste, and Tina McGivney. Also, telephone records were obtained.

Shelley Solano, an I.H.O.P. server, was acquainted with the victim. Solano testified that she experienced several incidents at work when the defendant's behavior was inappropriate. According to Solano, the defendant bruised her arm on one occasion by pinching her skin. The defendant later commented, "Oh, you thought about me every time you took a shower." Solano further testified that the defendant placed his hands inside her apron on one occasion. She reported the defendant's behavior to the store owner.

Tina McGivney was an assistant manager at I.H.O.P. when the defendant was the general manager. According to her testimony, McGivney and the defendant initially had a friendly working relationship. She testified that they went to an Arabic restaurant on one occasion in order to become familiar with each other as business partners. Afterwards, they went to the defendant's apartment to watch a movie. McGivney wanted to smoke a cigarette on the defendant's balcony. The defendant did not want her to smoke the cigarette on the balcony and told her to go to his bedroom instead because he had a fan in there. The defendant told McGivney to sit on his bed and she sat on the edge of the bed and smoked her cigarette. The defendant came in the bedroom and laid on the bed. The defendant put his arm around her neck, kissed her, and touched her breast. McGivney told the defendant to stop and he complied. Further incidents occurred at work. Specifically, the defendant would rub his knee against McGivney's knee and would approach her while her back was turned and "rub up against me." The defendant also looked down her shirt and touched her breast one day at work. The defendant did not stop when she told him to stop. McGivney further testified that she filed store complaints regarding the defendant's behavior. McGivney was ultimately fired. The defendant told McGivney that she was being fired because a biscuit was left on a shelf. On cross-examination, McGivney confirmed that she

had a DWI conviction but denied that her termination was due to her being inebriated at work.

The defendant denied any inappropriate comments or touching. Specifically the defendant stated that he did not try to kiss Haste and when asked why she would make such a claim, he responded, "She -- well --it's just the obligation of what I know of Ms. Kristene Haste. And, you know, she just -- I think it's kind of sort of an invention." The defendant further testified that he had to suspend Solano a few times due to excessive tardiness, dress code violations, and for "drug dealing from the restaurant." The defendant testified that he fired McGivney for coming to work late and inebriated.

The defendant testified that on the date in question, he took the victim to The Price Is Right Auto Sales to meet the owner, Raouf Elghorayeby. The defendant had met with Elghorayeby on two occasions. According to the defendant, Elghorayeby was not present when he took the victim to the dealership, so he gave one of the dealership employees his business card and told him to have Elghorayeby call him upon his return. The defendant further testified that he then took the victim to a grocery store in Lacombe where her roommate worked. The victim entered the store while the defendant waited. When she returned, she asked the defendant to take her back to the dealership. According to the defendant, he informed the victim that they would be going to his apartment to "drop some stuff off" before returning to the dealership. Once they arrived at his apartment complex, the defendant invited the victim to eat pizza in his apartment while they waited to hear from Elghorayeby. The defendant further testified that his roommate, whom he identified as Soloman, was present at the time watching a movie. The defendant fell asleep in his bedroom while the victim and Soloman watched the movie. The defendant woke up when his telephone rang. When he left his bedroom he saw the victim and stated, "My God, I'm sorry, I forgot all

about you." The victim was ready to go home so the defendant drove her home. The defendant stated that he did not rape the victim but remembered her returning to work a week later and making the claim. At the time of the trial, the defendant was unaware of Soloman's whereabouts.

On or near February 4, 2007, the defendant traveled to Egypt where his wife and children were, as one of his children was disabled and had to have a surgical procedure. The defendant contacted the store owner while in Egypt to give him an update on his child's condition. The owner told the defendant about the victim's report to the police. According to the defendant, he made attempts to find out if the police were looking for him. The defendant was working in Charleston, South Carolina, when he voluntarily waived extradition to Louisiana.

Kamal Sbih, the owner of the Covington I.H.O.P., testified that Haste and Solano were working for him at the time of the trial, although Solano had been suspended in the past for disobedience. He noted several reasons for McGivney's termination including tardiness, her register being short, and for being inebriated at work. Sbih also stated that McGivney was suing I.H.O.P. Sbih testified that the victim never complained to him about the defendant. He further stated that he received complaints from only Solano regarding the defendant. Specifically, Solano told Sbih that the defendant touched her inappropriately while they were in a walk-in cooler alone.

The defendant claimed that he slept while the victim was in his apartment, and that he forgot she was there. However, the victim's testimony clearly differed from the defendant's. The victim testified she was certain that the defendant raped her. As admitted by the defendant, the victim stopped coming to work after the date in question and returned with the claim that the defendant had raped her. The victim, who was eighteen years old at the time of the trial, testified that the defendant pulled her down to the sofa, covered her mouth, and held her hands

down. The victim was very petite and the defendant was so much stronger that she did not believe she could physically resist the act. The victim's testimony supports a finding that she was prevented from resisting the act by force under circumstances where she reasonably believed that such resistance would not prevent the rape.

The verdict rendered against the defendant indicates that the jury accepted the victim's account of the events. On review, this court will not assess the credibility of witnesses or reweigh the evidence to overturn a fact finder's determination of guilt. The testimony of the victim alone is sufficient to prove the elements of the offense. (State v. Harper, 2007-0299, p. 10 (LA. App. 1 Cir. 9/5/07), 970 So.2d 592, 599, writ denied. 2007-1921 (La. 2/15/08), 976 So.2d 173). As the trier of fact, the jury was entitled to accept or reject, in whole or in part, the testimony of any witness. The fact that the record contains evidence that conflicts with the testimony accepted by a trier of fact does not render the evidence accepted by the trier of fact insufficient. **State v. Azema**, 633 So.2d 723, 727 (La. App. 1st Cir. 1993), writ denied, 94-0141 (La. 4/29/94), 637 So.2d 460; **State v. Quinn**, 479 So.2d 592, 596 (La. App. 1st Cir. 1985). In reviewing the evidence, we cannot say that the jury's determination was irrational under the facts and circumstances presented to them. See **State v. Ordodi**, 2006-0207, p. 14 (La. 11/29/06), 946 So.2d 654, 662. After a thorough review of the record, we find the evidence presented herein, viewed in the light most favorable to the State, supports the jury's finding that beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, all of the elements of forcible rape and the defendant's identity as the perpetrator of the offense against the victim were proven. Thus, the trial court did not err in denying the motion for post verdict judgment of acquittal or motion for new trial insofar as it argues that the verdict is

contrary to the evidence. Assignments of error number two and three, in noted part, are without merit.

ASSIGNMENT OF ERROR NUMBER ONE AND ASSIGNMENT OF ERROR NUMBER THREE (IN PART)

In the first assignment of error, the defendant argues that the trial court erred in allowing the State to introduce evidence of other crimes because the prejudicial effect of such testimony outweighed its probative value. The defendant notes that the evidence of other crimes, as testified by State witnesses, constituted inappropriate sexual touching or fondling without the involvement of force or any rape. The defendant argues that evidence of inappropriate sexual touching or fondling is not relevant in this case. Thus, the defendant argues that the testimony of Kristene Haste, Shelley Solano, and Tina McGivney should not have been admitted. In assignment of error number three, the defendant in part argues that the trial court erred in denying the motion for new trial as other crimes evidence was erroneously admitted.

Evidence of other crimes, wrongs, or acts is generally inadmissible to impeach the character of the accused. La. Code Evid. art. 404B; **State v. Talbert**, 416 So.2d 97, 99 (La. 1982); **State v. Prieur**, 277 So.2d 126, 128 (La. 1973). However, such evidence may be admissible to prove motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident. La. Code Evid. art. 404B(1). The State bears the burden of proving that the defendant committed the other crimes, wrongs, or acts. **State v. Rose**, 2006-0402, p. 12 (La. 2/22/07), 949 So.2d 1236, 1243.[3]

[3] The burden of proof in a pretrial hearing held in accordance with **Prieur** shall be identical to the burden of proof required by Federal Rules of Evidence Article IV, Rule 404. La. Code Evid. art. 1104. The burden of proof required by Federal Rules of Evidence Article IV, Rule 404, is satisfied upon a showing of sufficient evidence to support a finding by the jury that the defendant committed the other crime, wrong, or act. See **Huddleston v. U.S.**, 485 U.S. 681, 685, 108 S.Ct. 1496, 1499, 99 L.Ed.2d 771 (1988). The Louisiana Supreme Court has yet to address the issue of the burden of proof required for the admission of other crimes evidence in light of the repeal of La. Code Evid. art. 1103 and the addition of La. Code Evid. art. 1104. However, numerous Louisiana appellate courts, including this court, have held that the burden of

In accordance with La. Code Evid. art. 403, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, or waste of time. Louisiana Code of Evidence article 412.2 provides:

> A. When an accused is charged with a crime *involving sexually assaultive behavior, or* with acts that constitute a sex offense involving a victim who was under the age of seventeen at the time of the offense, evidence of the accused's commission of another crime, wrong, or act involving sexually assaultive behavior *or* acts which indicate a lustful disposition toward children may be admissible and may be considered for its bearing on any matter to which it is relevant subject to the balancing test provided in Article 403. [Emphasis added.]
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> B. In a case in which the state intends to offer evidence under the provisions of this Article, the prosecution shall, upon request of the accused, provide reasonable notice in advance of trial of the nature of any such evidence it intends to introduce at trial for such purposes.
>
> C. This Article shall not be construed to limit the admission or consideration of evidence under any other rule.

Article 412.2 was a legislative response to earlier decisions from the Louisiana Supreme Court refusing to recognize a "lustful disposition" exception to the prohibition of other crimes evidence under La. Code Evid. art. 404. The language of Article 412.2 closely follows Fed. R. Evid. 413, with the proviso that the evidence addressed therein "may be admissible ... subject to the balancing test provided in Article 403." **State v. Williams**, 2002-1030, pp. 4-5 (La. 10/15/02), 830 So.2d 984, 986-87. Thus, the jurisprudence interpreting the federal rule is highly instructive. See **Wright**, 98-0601 at p. 7, 730 So.2d at 489. The federal courts have determined that Fed. R. Evid. 413 is based upon the premise that evidence of other sexual assaults is highly relevant to prove the propensity to commit like crimes and often justifies the risk of unfair prejudice. (U.S. v. Guardia, 135 F.3d 1326, 1328 (10th Cir. 1998).

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proof is now less than "clear and convincing." See **State v. Williams**, 99-2576, p. 7 n. 4 (La. App. 1st Cir. 9/22/00), 769 So.2d 730, 735 n. 4.

In finding the testimony at issue admissible, the trial court noted that full cross-examination of the witnesses would be allowed, including possible motive for Haste and her lack of reporting to the authorities or to management and ownership of the restaurant. Generally, a trial court's ruling on the admissibility of evidence of other crimes will not be overturned absent an abuse of discretion. **State v. Galliano**, 2002-2849, pp. 3-4 (La. 1/10/03), 839 So.2d 932, 934 (per curiam).

In **State v. Buckenberger**, 2007-1422, pp. 10-11 (La. App. 1st Cir. 2/8/08), 984 So.2d 751, 757, writ denied, 2008-0877 (La. 11/21/08), 996 So.2d 1104. the defendant was convicted of attempted second degree murder, attempted forcible rape, second degree kidnapping, and two counts of public intimidation for attempting to run over the victim with his car and attempting to rape her in his car. This court found that evidence of the defendant's commission of other crimes involving sexually assaultive behavior against two prior victims was admissible, as the high probative value of the evidence, regarding defendant's propensity to use force to rape women in and near vehicles, was not substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay or waste of time. Similarly, in the instant case we find that the evidence of the defendant's commission of crimes involving sexually assaultive behavior against Haste, Solano, and McGivney was admissible at trial. The highly probative value of the evidence in regard to the defendant's propensity to indulge in unwanted sexually assaultive advances against subordinate female co-workers was not substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay or waste of time. Thus, the trial court did not err in admitting the testimony in question or in denying the motion for new trial in this regard. Assignments of error number one and three in noted part are without merit.

ASSIGNMENT OF ERROR NUMBER FOUR

In the fourth and final assignment of error, the defendant contends that the trial court erred in denying his motion to reconsider sentence. The defendant argues that the seventeen-year, hard-labor sentence, with two years being served without the benefit of probation, parole, or suspension of sentence, is excessive. The defendant makes several factual contentions, including the lack of testimony about the amount of force used, the lack of evidence of threats of physical violence, that the victim did not fight him off or scream to alert the other person in the apartment, and that the victim did not testify that she reasonably believed that resistance would not prevent the rape. Although the error assigned is the denial of the motion to reconsider sentence, the substance of the defendant's complaint is that his sentence was excessive.

Article I, Section 20 of the Louisiana Constitution explicitly prohibits excessive sentences. Although a sentence is within the statutory limits, the sentence may still violate a defendant's constitutional right against excessive punishment. In reviewing a sentence for excessiveness, the appellate court must consider the punishment and the crime in light of the harm to society and gauge whether the penalty is so disproportionate as to shock its sense of justice or that the sentence makes no reasonable contribution to acceptable penal goals and, therefore, is nothing more than the needless imposition of pain and suffering. See **State v. Guzman**, 99-1528, 99-1753, p. 15 (La. 5/16/00), 769 So.2d 1158, 1167. The trial court has wide discretion in imposing a sentence within the statutory limits and such a sentence will not be set aside as excessive in the absence of manifest abuse of discretion. **State v. Loston**, 2003-0977, p. 20 (La. App. 1st Cir. 2/23/04), 874 So.2d 197, 210, writ denied, 2004-0792 (La. 9/24/04), 882 So.2d 1167.

Louisiana Code of Criminal Procedure article 894.1 sets forth items that must be considered by the trial court before imposing sentence. 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. Leblanc**, 2004-1032, p. 10 (La. App. 1st Cir. 12/17/04), 897 So.2d 736, 743, writ denied, 2005-0150 (La. 4/29/05), 901 So.2d 1063, cert. denied, 546 U.S. 905, 126 S.Ct. 254, 163 L.Ed.2d 231 (2005). Failure to comply with Article 894.1 does not necessitate the invalidation of a sentence or warrant a remand for resentencing if the record clearly illuminates and supports the sentencing choice. **State v. Smith**, 430 So.2d 31, 46 (La. 1983).

The penalty for forcible rape is five to forty years imprisonment at hard labor, with at least two years to be served without the benefit of probation, parole, or suspension of sentence. La. R.S. 14:42.1B. In imposing the defendant's sentence, the trial court considered the sentencing guidelines. The trial court specifically noted that the defendant knew or should have known that the victim of the offense was particularly vulnerable or incapable of resistance due to her youth. The trial court further noted that the defendant used his position or status, as the victim was a subordinate employee at the restaurant where the defendant was employed as the general manager and noted the pattern of behavior established by the testimony presented by other female subordinates. The trial court also considered the fact that the defendant has no history of prior criminal activity and that imprisonment would entail excessive hardship to his dependents, noting that the defendant has a disabled child. Finally, the trial court was mindful of the seriousness of the defendant's behavior, the impact that it had on the victim, especially considering her youthful age at the time of the offense, and the fact that the defendant did not express any remorse. We find that the record in this case adequately supports the sentence imposed and that the trial court did not err in denying the motion to reconsider sentence.

After thorough review of the record and the law and jurisprudence relevant to the issues raised in this matter, and based on the foregoing, we find no grounds to reverse the judgment of the trial court.

CONVICTION AND SENTENCE AFFIRMED.