NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2007 KA 1281

STATE OF LOUISIANA

VERSUS

DWIGHT WOODS

Judgment Rendered: December 21, 2007

* * * * * *

On appeal from the
Thirty-Second Judicial District Court
In and for the Parish of Terrebonne
State of Louisiana
Suit Number 460,959

Honorable John R. Walker, Presiding

* * * * * *

Joseph L. Waitz, Jr.
District Attorney

Ellen Daigle Doskey
Assistant District Attorney
Houma, Louisiana

Counsel for Appellee
State of Louisiana

Margaret S. Sollars
Louisiana Appellate Project
Thibodaux, Louisiana

Counsel for Defendant/Appellant
Dwight Woods

* * * * * *

BEFORE: WHIPPLE, GUIDRY, AND HUGHES, JJ.

GUIDRY, J.

The defendant, Dwight Woods, was charged by bill of information with one count of armed robbery, a violation of La. R.S. 14:64, and pled not guilty. He waived his right to a jury trial and, following a bench trial, was found guilty of the responsive offense of first-degree robbery, a violation of La. R.S. 14:64.1. He moved for a new trial and for a post-verdict judgment of acquittal, but the motions were denied. He was sentenced to twelve years at hard labor without benefit of probation, parole, or suspension of sentence. He moved for reconsideration of the sentence, but the motion was denied. He now appeals, designating two assignments of error. We affirm the conviction and sentence.

ASSIGNMENTS OF ERROR

1. The evidence was insufficient to support this conviction beyond a reasonable doubt.

2. The sentence imposed by the court was illegal and unduly excessive.

FACTS

On June 1, 2005, Jamesha Howard was working as the night manager of Whataburger in Houma. She was eight months pregnant. At approximately 2:30 a.m. or 2:45 a.m., she began feeling ill and decided to go home. As she opened her car door after parking her car at the apartment complex where she lived, a man put a gun to the left side of her head. She screamed, and the man threatened to kill her if she screamed again. The man told her to give him her purse and to close her car door. The victim complied with the man's demands, and he left with her purse containing $4, her checkbook, her bankcard, and her medicine.

On June 10, 2005, the victim's purse was recovered in a ditch approximately two or three miles from the scene of the robbery. The victim indicated the purse no longer contained any cash or medicine, and she believed her checkbook or bankcard also was stolen.

The victim indicated the robber had the top of his face covered with a T-shirt. She conceded the lighting in the area was "not very good at all[,]" but stated there was a light directly over her parking place. At the time of the robbery, she described the robber as a black male with a mustache, 5'8" tall, weighing approximately 160 or 170 pounds. She described the man's gun as a black "hand-held" gun, but did not know whether or not the gun was real. She identified the defendant at trial as the robber.

After losing consciousness for some time, the victim went to her apartment and reported the robbery to the police. She was terrified and hysterical. She told the police she thought the robber was a man (not the defendant) who lived in the apartment complex next door to the apartment complex where she lived. Later that day, she went to the emergency room because she was scared and her blood pressure "kind of dropped."

A few days after the robbery, the victim saw the defendant in the apartment complex where she lived and recognized him as a man she had spoken to at the complex before, but knew only as "Meanie." The victim confronted the defendant and asked him if he had robbed her. The defendant denied robbing the victim and told her that he had "a bunch of brothers that look[ed] like [the defendant]." Kathleen Ronquillo[1] then approached the victim and asked if she was sure the defendant was the robber. Ronquillo stated that the defendant "didn't mean" to rob the victim and "that neither one of them knew where they were at, at the time, anything."

The victim denied that she did not name the defendant as the robber until she received "other information" from Courtney Nixon.[2] The victim indicated Nixon told her the defendant's real name and that he had been bragging that he robbed a

[1] In a June 29, 2005 statement, the defendant indicated Kathleen Ronquillo was his girlfriend.

[2] The victim indicated Courtney Nixon lived in the same apartment complex she lived in at the time of the offense and was one of the defendant's friends.

pregnant girl in the parking lot. The victim conceded that she spoke to Nixon prior to seeing the defendant at the apartment complex.

Houma Police Detective Dana Tyrone Coleman spoke to the defendant after he was taken to the police station on a charge unrelated to the robbery. After the defendant signed an advice of rights/waiver of rights form, Detective Coleman asked him if he had any idea what the detective wanted to talk to him about. The defendant initially denied any knowledge of the robbery. He then claimed he had knowledge that a female was robbed and he heard that approximately $4 was taken from her. He had no explanation for how he knew about the robbery. Subsequently, he stated that he and one of his girlfriends, Kathy Ronquillo, were walking in the area of 1406 Acadian and observed a white female pulling into the driveway of the apartment complex. The defendant claimed he fired a paintball gun at the female "a couple of times," and she gave her purse to him.

The State introduced into evidence the defendant's June 29, 2005 statement, typed by Detective Coleman. Therein, the defendant claimed he fired a paintball gun, making loud air sounds, at a lady pulling into the apartment complex near the Houma Tunnel. The defendant claimed the lady "yelled" and dropped her purse, and he "picked up" the purse. The defendant claimed his girlfriend, Ronquillo, tried to return the purse to the lady, but she threw it on the ground and he and Ronquillo took the purse with them when they left the area.

Detective Coleman indicated that attempts to contact Nixon and Ronquillo were unsuccessful.

SUFFICIENCY OF THE EVIDENCE

In assignment of error number one, the defendant argues the State failed to prove beyond a reasonable doubt that he committed the crime because the victim consistently named someone else as the robber, and he (the defendant) denied

knowing anything about the robbery. The defendant does not dispute that the victim was robbed.

The standard of review for sufficiency of the evidence to uphold a conviction 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. Where the key issue is the defendant's identity as the perpetrator, rather than whether or not the crime was committed, the State is required to negate any reasonable probability of misidentification. Positive identification by only one witness may be sufficient to support the defendant's conviction. State v. Wright, 98-0601, pp. 2-3 (La. App. 1st Cir. 2/19/99), 730 So.2d 485, 486-87, writs denied, 99-0802 (La. 10/29/99), 748 So.2d 1157, 2000-0895 (La. 11/17/00), 773 So.2d 732 (quoting La. R.S. 15:438).

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 3, 730 So.2d at 487.

First-degree robbery is the taking of anything of value belonging to another from the person of another, or that is in the immediate control of another, by use of force or intimidation, when the offender leads the victim to reasonably believe he is armed with a dangerous weapon. La. R.S. 14:64.1(A).

The first-degree robbery statute has objective and subjective components. The State must prove that the offender induced a subjective belief in the victim that he was armed with a dangerous weapon and that the victim's belief was objectively reasonable under the circumstances. The statute thus excludes unreasonable panic reactions by the victim, but otherwise allows the victim's subjective beliefs to determine whether the offender has committed first degree robbery or the lesser offense of simple robbery in violation of La. R.S. 14:65. Direct testimony by the victim that he believed the defendant was armed, or circumstantial inferences arising from the victim's immediate surrender of his personal possessions in response to the defendant's threats, may support a conviction for first-degree robbery. State v. Caples, 2005-2517, pp. 4-5 (La. App. 1st Cir. 6/9/06), 938 So.2d 147, 151, writ denied, 2006-2466 (La. 4/27/07), 955 So.2d 684.

After a thorough review of the record, we are convinced the evidence, viewed in the light most favorable to the State, proved beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, all of the elements of first-degree robbery and the defendant's identity as the perpetrator of that offense. The victim explained why she initially thought the robber was someone who lived in the apartment complex next to the apartment complex where she lived, i.e., because that person was "always outside at that time." She also explained she was shaken from the robbery. At trial, she testified she was "positive" the defendant was the person who had robbed her. In addition to recognizing the bottom half of the defendant's face, she also recognized his voice. In reviewing the evidence, we cannot say that the fact finder's determination that the defendant was the robber is irrational under the facts and circumstances presented to him. See State v. Ordodi, 2006-0207, p. 14 (La. 11/29/06), 946 So.2d 654, 662. Further, even in the defendant's self-serving account of the incident, the victim surrendered her purse in response to the defendant's firing of a paintball gun

at her. Once the crime itself has been established, a confession alone may be used to identify the accused as the perpetrator. State v. Carter, 521 So.2d 553, 555 (La. App. 1st Cir. 1988).

This assignment of error is without merit.

EXCESSIVE SENTENCE

In assignment of error number two, the defendant argues the trial court failed to give reasons for the sentence imposed, the sentence is unsupported by the record, and the sentence was unconstitutionally excessive.

LA. CODE CRIM. P. ART. 894.1

The Louisiana Code of Criminal Procedure sets forth items, which 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. In light of the criteria expressed by Article 894.1, a review for 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. Hurst, 99-2868, p. 10 (La. App. 1st Cir. 10/3/00), 797 So.2d 75, 83, writ denied, 2000-3053 (La. 10/5/01), 798 So.2d 962.

CONSTITUTIONAL EXCESSIVENESS

Article I, section 20, of the Louisiana Constitution prohibits the imposition of excessive punishment. Although a sentence may be within statutory limits, it may violate a defendant's constitutional right against excessive punishment and is subject to appellate review. Generally, a sentence is considered excessive if it is grossly disproportionate to the severity of the crime or is nothing more than the needless imposition of pain and suffering. A sentence is considered grossly disproportionate if, when the crime and punishment are considered in light of the harm to society, it is so disproportionate as to shock one's sense of justice. A trial judge is given wide discretion in the imposition of sentences within statutory

limits, and the sentence imposed should not be set aside as excessive in the absence of manifest abuse of discretion. Hurst, 99-2868 at 10-11, 797 So.2d at 83.

Whoever commits the crime of first-degree robbery shall be imprisoned at hard labor for not less than three years and for not more than forty years, without benefit of parole, probation or suspension of imposition or execution of sentence. La. R.S. 14:64.1(B). The defendant was sentenced to twelve years at hard labor without benefit of probation, parole, or suspension of sentence.

In imposing sentence, the trial court did not formally state for the record the Article 894.1 considerations, which it took into account and the factual basis therefor. See La. C.Cr.P. art. 894.1(C). However, the record reflects that the trial court considered the Article 894.1 criteria, and thus remand for formal compliance with Article 894.1(C) is not warranted. See La. C.Cr.P. art. 921. Moreover, the record supports the sentence imposed. See La. C.Cr.P. art. 881.4(D).

In denying the post trial motions, immediately before the defense waived sentencing delays and the trial court imposed sentence, the trial court noted the case was tried to the bench, the trial court had the benefit of viewing the witnesses while they testified, and the trial court found that the victim was credible. The victim's testimony established that the defendant used a gun and threats of actual violence to terrorize an eight-months-pregnant woman into surrendering her purse.

A thorough review of the record reveals the trial court adequately considered the criteria of Article 894.1 and did not manifestly abuse its discretion in imposing sentence. See La. C.Cr.P. art. 894.1(B)(1), (B)(2), and (B)(6). Further, the sentence imposed was not grossly disproportionate to the severity of the offense, and thus, was not unconstitutionally excessive.

This assignment of error is without merit.

CONVICTION AND SENTENCE AFFIRMED.