NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2008 KA 0438

STATE OF LOUISIANA

VERSUS

JOHN FITZGERALD BONVILLAIN

DATE OF JUDGMENT: SEP 2 3 2008

ON APPEAL FROM THE THIRTY-SECOND JUDICIAL DISTRICT COURT
(NUMBER 464,689), PARISH OF TERREBONNE
STATE OF LOUISIANA

HONORABLE GEORGE J. LARKE , JUDGE

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BEFORE: KUHN, GUIDRY, AND GAIDRY, JJ.

Disposition: CONVICTIONS AND SENTENCES AFFIRMED.

Guidry, J. Concurs.

KUHN, J.

Defendant, John Fitzgerald Bonvillain, was charged by bill of information with manslaughter and obstruction of justice involving a criminal proceeding in which a sentence of death or life imprisonment may be imposed, violations of La. R.S. 14:31A(2)(a) and La. R.S.14:130.1B(1). As to both charges, defendant entered a plea of not guilty. After a trial by jury, defendant was found guilty as charged on count one, and guilty of the responsive offense of obstruction of justice involving a criminal proceeding in which a sentence of imprisonment necessarily at hard labor for any period less than a life sentence may be imposed (a violation of La. R.S. 14:130.1B(2)) on count two. As to count one, defendant was sentenced to forty years imprisonment at hard labor. As to count two, defendant was sentenced to twenty years imprisonment at hard labor. The trial court ordered that the sentences be served consecutively. Defendant now appeals, assigning as error the sufficiency of the evidence, the admission of photographs, and the trial court's denial of his motion to reconsider sentence as constitutionally excessive. We affirm the convictions and sentences.

STATEMENT OF FACTS

The victim, Ashley Scivicque, was a friend of Becky Dardar, the girlfriend of defendant's brother, Travis Bonvillain. During the late hours on September 17, 2004, or the early morning hours of September 18th, after visiting local establishments (including a bar and a lounge), Dardar, Bonvillain,[1] and the victim went to defendant's residence. The victim did not know defendant before this. At defendant's residence, she consumed alcohol and drugs. At some point, Dardar

[1] We refer to Travis Bonvillain as "Bonvillain."

and Bonvillain left defendant's residence without the victim. According to Larry Fitch, a friend of defendant's who often spent nights at defendant's residence, the victim was lying in defendant's bed when he arrived sometime around 3:00 a.m. (during the early morning hours of September 18, 2004). At some point, Fitch, believing that the victim was dead, assisted defendant in wrapping the victim's body with plastic Saran-type wrap and relocating her to a spare bedroom. The details of the instant offense emerged when Fitch provided statements to officers of the Houma City Police Department and the Terrebonne Parish Sheriff's Office. The statements provided by Fitch and further investigation led to defendant's arrest in connection with the victim's death. During the trial, defendant admitted that the victim was at his residence on September 18th but denied any involvement in the victim's death.

ASSIGNMENTS OF ERROR NUMBERS ONE AND TWO

Defendant asserts that the evidence was insufficient to support the convictions of either manslaughter or obstruction of justice. Alternatively, he maintains that the evidence establishes at most a conviction of negligent homicide because he lacked the requisite intent to cause death or great bodily harm while engaged in the perpetration of a false imprisonment or simple battery, since the victim was already deceased when he wrapped her body.

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. C.Cr.P. art. 821, is whether the evidence, when viewed in the light

most favorable to the prosecution, was sufficient to convince a rational trier of fact that all of the elements of the crime had been proved beyond a reasonable doubt. ***State v. Brown***, 2003-0897, p. 22 (La. 4/12/05), 907 So.2d 1, 18. When analyzing circumstantial evidence, La. R.S. 15:438 provides that the trier of fact must be satisfied that the overall evidence excludes every reasonable hypothesis of innocence. ***State v. Graham***, 2002-1492, p. 5 (La. App. 1st Cir. 2/14/03), 845 So.2d 416, 420.

Manslaughter is, in pertinent part, a homicide committed, without any intent to cause death or great bodily harm, when the offender is engaged in the perpetration of particular felonies or any intentional misdemeanor directly affecting the person. La. R.S. 14:31A(2). Simple battery and false imprisonment are the intentional misdemeanors applicable under the facts of this case and may be used to establish the existence of manslaughter. Simple battery is, in pertinent part, the intentional use of force or violence upon the person of another without the consent of the victim. La. R.S. 14:33 and La. R.S. 14:35. False imprisonment is the intentional confinement or detention of another, without his consent and without proper legal authority. La. R.S. 14:46. These are general intent crimes. Thus, the circumstances must show that defendant must have adverted to the prescribed criminal consequences as reasonably certain to result from his act or failure to act. La. R.S. 14:10(2).

Obstruction of justice is defined pursuant to La. R.S. 14:130.1, in pertinent part, as follows:

> A. The crime of obstruction of justice is any of the following when committed with the knowledge that such act has, reasonably may, or will affect an actual or potential present, past, or future criminal proceeding as hereinafter described:

(1) Tampering with evidence with the specific intent of distorting the results of any criminal investigation or proceeding which may reasonably prove relevant to a criminal investigation or proceeding. Tampering with evidence shall include the intentional alteration, movement, removal, or addition of any object or substance either:

(a) At the location of any incident which the perpetrator knows or has good reason to believe will be the subject of any investigation by state, local, or United States law enforcement officers; or

(b) At the location of storage, transfer, or place of review of any such evidence.

(2) Using or threatening force toward the person or property of another with the specific intent to:

* * *

(c) Cause or induce the alteration, destruction, mutilation, or concealment of any object with the specific intent to impair the object's integrity or availability for use in any criminal proceeding.

Conflicting testimony was presented during the trial about who was present just before or at the time of the offenses. Dardar and Bonvillain testified that they last saw the victim when they left her at defendant's residence. They both testified that the victim had taken pills that night -- Somas or Vicodin -- although their testimony conflicted about whether defendant provided any pills to the victim. Although they were present at defendant's residence into the morning hours, neither saw Fitch. Having observed flirtatious behavior between defendant and the victim, they assumed the two were engaging in sexual relations in defendant's bedroom when they decided to leave with the victim's baby. Dardar and Bonvillain testified that they became concerned when the victim never came to retrieve her baby. After they woke up the next morning, they spoke to defendant

and he told them that the victim had left, indicating that he did not know her whereabouts. Defendant asked them to not mention to anyone that the victim had been at his residence. Dardar and Bonvillian turned the baby's care over to others, including the baby's father.

Fitch testified that he arrived at defendant's residence around 8:00 a.m., after having been at a casino all night. Wearing only his boxer shorts when he came to the door, defendant advised Fitch that the victim was at the residence. Fitch stated that he did not know the victim. Although Dardar and Bonvillain had testified that they had left with the baby, Fitch stated that he had observed the victim lying in defendant's bed with her baby across her chest. He then ate and went to sleep. When Fitch woke up, defendant was pacing at the foot of the bed. Fitch asked him what was wrong and defendant told Fitch that the victim was dead. Defendant and Fitch subsequently wrapped the victim's body, moved her to a spare bedroom, and defendant locked the bedroom door. They left to meet some females for an outing. After parting with the females, they returned to defendant's home and had visitors.

Theresa Scivicque, the victim's mother, reported the victim missing at 8:35 p.m., Saturday, September 18, 2004. Fitch ultimately reported the incident to his attorney and then to the police. The police obtained warrants to search defendant's properties and discovered the victim's body in the trunk of his vehicle.

On September 20, 2004, Dr. Susan Garcia, an expert in forensic pathology, performed the autopsy of the victim. According to Dr. Garcia, the victim had been wrapped in plastic wrap from head to toe with only her panties on. The victim's external injuries included several abrasions and bruises. Specifically, there were

bruises on her left thigh, left lower leg, left elbow, left forearm, on the back of her right hand, and an abrasion at the base of her neck. The victim's bruises were superficial and recent, estimated as having occurred within twenty-four hours of the examination. The victim suffered marginal emphysema, which was an indication that before her death, she could inhale but could not exhale. Dr. Garcia described the victim's death as non-instantaneous. She noted that the victim's brain was slightly enlarged and its visual surface showed a lack of oxygen.

Toxicology screening results revealed the victim's body contained identifiable amounts of various toxins, including: opiates, benzodiazepines (a smooth-muscle relaxant), the marijuana metabolite (THC), a small amount of alcohol (.05), acetaminophen (associated with Tylenol), nicotine and its metabolite (the main ingredient in cigarettes), dextromethorphan (liquid cough syrup), and Dihydrocodeinone (a narcotic analgesic). The victim also had an elevated level of hydrocodone (the generic form of Vicodin), in quantities sufficient to render a person unconscious.

Dr. Garcia indicated that there was no sign of a struggle and concluded the victim was unconscious prior to her being wrapped in the plastic wrap. She opined that the cause of death was asphyxia due to suffocation. Dr. Garcia explained that the victim's toxicology most likely rendered her unconscious, while the plastic wrap prevented adequate air exchange and was the cause of death. It was implausible to Dr. Garcia that the victim could have died from pillow suffocation. While she agreed that the forceful application of a pillow to the face can cause suffocation, Dr. Garcia stated that in those cases there usually is an

accompanying injury to the inside of the mouth and bleeding into the white part of the eyes, which were not present on the victim.

Janice Reeves was accepted as an expert in fingerprint identification and comparison. She identified one of the fingerprints recovered from the plastic wrap as a match to defendant's right middle fingerprint.

Defendant's former attorney, Jake Lemmon, who represented defendant in January 2005, questioned defendant in the presence of officers at the Houma City Police Department. According to Lt. Dawn Foret, during the interview defendant stated that Fitch had given drugs to the victim and she voluntarily took them. He said that when he woke up, the victim was stiff in his bed. Without explaining any of the details, defendant stated that the victim's body had been wrapped in plastic wrap and that he personally placed the victim in the trunk of his vehicle. Additional information was not provided and the officers were not allowed to question defendant.

During the trial, defendant testified that after Fitch arrived at his residence on the morning of September 18th, the victim was awake and talked with Fitch because they knew each other. According to defendant, the victim had purchased marijuana from Fitch on previous occasions. Defendant went to a store and purchased breakfast. He was gone for no more than forty-five minutes, and when he returned, the victim and Fitch were not there. Defendant stated that he never saw the victim's baby but indicated that his brother informed him that he and Dardar had taken the baby with them. Defendant said that he did not want the baby's father to find out that the victim had been to his residence. Fitch told defendant that he had taken the victim to his residence. According to defendant,

because he had been spending time at his parent's home, he only found out that the victim was dead through his attorney that Sunday. Although he realized he was under investigation, defendant explained he thought the police were conducting a drug bust because he had previously purchased ten thousand dollars (one hundred pounds) of marijuana and had seventy to eighty pounds stored at one of the two residences that he owned.

Defendant insisted that he played no role in the victim's death. He explained that his fingerprint was on the Saran wrap because he had rerolled the wrap when it had unrolled near his computer desk. This testimony was supported by defendant's friend, Kenneth Pellegrin, who testified that he was present at the time and observed defendant as he picked up the unrolled wrapping paper. Defendant also pointed out that Fitch had keys to his house and vehicles.

Defendant testified about his criminal background, which included prior convictions for aggravated assault, aggravated or aggravated second degree battery, illegal discharge, criminal damage to property, and criminal mischief. Defendant admitted that the aggravated second degree battery resulted from an argument he was having with his ex-wife during which he discharged a firearm and shot her in the hand. Defendant maintained that the shooting was accidental.

As the trier of fact, a jury is free to accept or reject, in whole or in part, the testimony of any witness. ***State v. Richardson***, 459 So.2d 31, 38 (La. App. 1st Cir. 1984). 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. *Richardson*, 459 So.2d at 38. When a case involves circumstantial evidence and

the trier of fact reasonably rejects a hypothesis of innocence presented by the defense, that hypothesis falls, and the defendant is guilty unless there is another hypothesis that raises a reasonable doubt. ***State v. Moten***, 510 So.2d 55, 61 (La. App. 1st Cir.), writ denied, 514 So.2d 126 (La. 1987). 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). In the absence of internal contradiction or irreconcilable conflict with physical evidence, one witness's testimony, if believed by the trier of fact, is sufficient support for a requisite factual conclusion. ***State v. Thomas***, 2005-2210, p. 8 (La. App. 1st Cir. 6/9/06), 938 So.2d 168, 174, writ denied, 2006-2403 (La. 4/27/07), 955 So.2d 683.

We find that the evidence supports defendant's convictions. Defendant's statements to the police and his trial testimony were extremely inconsistent. Fitch, who defendant implicated, went to the police station voluntarily and made incriminating statements. His statements to the police were wholly consistent with his trial testimony. Clearly, the jury found Fitch more credible than defendant. From the testimonial evidence identifying defendant's fingerprint on the wrap, the jury could reasonably conclude he had wrapped the victim in plastic wrap. And expert testimony established that the victim's body was bruised and completely wrapped in plastic wrap sufficient to cause suffocation. Additionally, defendant's failure to immediately contact the police or seek medical assistance directly conflicts with his assertion that he believed the victim was deceased from causes other than suffocation from the plastic wrap. Finally, because the evidence supports a finding that the victim died from suffocation, the jury could have

reasonably concluded that she died as a result of having been wrapped in plastic wrap and, therefore, that defendant had the requisite intent to cause death or great bodily harm while engaged in the perpetration of a false imprisonment or simple battery so as to support the conviction of manslaughter rather than negligent homicide. Accordingly, we find the evidence is sufficient to establish manslaughter under a theory that defendant was engaged in the perpetration of the intentional misdemeanor of simple battery at the time of the commission of the homicide. It is, therefore, unnecessary for us to examine the facts to determine whether defendant was engaged in the commission of any other offense at the time of the homicide.

As to count two (obstruction of justice), based on the evidence before it, the jury could have appropriately concluded that defendant relocated the victim's body and clothing into the trunk of his vehicle in an effort to prevent its recovery. Moreover, in his appellate brief, defendant concedes that he sought to avoid a criminal proceeding or investigation. Viewing the evidence in the light most favorable to the prosecution, the evidence sufficiently supports the convictions. Assignments of error numbers one and two are without merit.

ASSIGNMENT OF ERROR NUMBER THREE

Defendant next contends the trial court erred in admitting five photographs (Exhibits 1, 2, 17, 18, and 20) into evidence that he describes as cumulative and inflammatory. Maintaining that the probative value of the photographs was outweighed by their prejudicial effect and requires a reversal of the convictions and remand for a new trial, defendant suggests that the State could have introduced one picture of the body found in the trunk of the car wrapped in plastic

wrap, instead of five. And because he was willing to stipulate that the wrapped body was that of the victim and that the coroner testified she was dead, defendant urges that the photograph of the body after the plastic wrap was removed (Exhibit 20) was particularly prejudicial and lacked probative value.

Louisiana Code of Evidence article 403 provides that otherwise 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. Photographs which illustrate any fact, shed light upon any fact or issue in the case, or are relevant to describe the person, place, or thing depicted, are generally admissible, provided their probative value outweighs any prejudicial effect. ***State v. Steward***, 95-1693, p. 5 (La. App. 1st Cir. 9/27/96), 681 So.2d 1007, 1011. The State is certainly entitled to the moral force of its evidence and postmortem photographs of murder victims are admissible to prove *corpus delicti*, to corroborate other evidence establishing cause of death, location, and placement of wounds, as well as to provide positive identification of the victim. ***State v. Koon***, 96-1208, p. 34 (La. 5/20/97), 704 So.2d 756, 776, cert. denied, 522 U.S. 1001, 118 S.Ct. 570, 139 L.Ed.2d 410 (1997).

A defendant cannot control the State's method of proof. In a criminal prosecution, the State has the burden of proving each element of the crime beyond a reasonable doubt. A defendant may not exclude from the jury's consideration relevant evidence concerning a crime merely by offering to stipulate. ***State v. Taylor***, 2001-1638, p. 16 (La. 1/14/03), 838 So.2d 729, 744-45, cert. denied, 540 U.S. 1103, 124 S.Ct. 1036, 157 L.Ed.2d 886 (2004). Moreover, the State cannot

be robbed of the moral force of its case merely because the stipulation is offered. ***State v. Ball***, 99-0428, p. 10 (La. 11/30/99), 756 So.2d 275, 280. The trial court's admission of photographs will not be overturned on appeal unless the reviewing court finds that the photographs are so inflammatory as to overwhelm the jurors' reason and lead them to convict the defendant without sufficient other evidence. See ***State v. Berry***, 95-1610, p. 16 (La. App. 1st Cir. 11/8/96), 684 So.2d 439, 454, writ denied, 97-0278 (La. 10/10/97), 703 So.2d 603.

During the trial, defendant objected to the admission of Exhibits 1, 2, 18, and 20. Although he now challenges both Exhibit 17 and 18 as cumulative, we note that defendant did not object to the admission of Exhibit 17 during trial. Exhibit 1 is an enlarged photograph of the victim's body wrapped in plastic wrap. Exhibit 2 is a photograph of the coroner as she began to perform the autopsy and depicts the victim still wrapped in plastic wrap. Exhibits 17 and 18 are photographs of the victim in the trunk of the vehicle. Exhibit 17 shows a blanket covering the body when it was first discovered with the feet exposed. In admitting Exhibit 18, the trial court found that the photograph was relevant to describe the person, thing, or place. The trial court noted that while the photograph is gruesome, it was necessary for the State to show the victim when she was discovered. Exhibit 20 is a headshot of the victim with the plastic removed. In admitting each of these exhibits, the trial court expressly concluded that the probative value of the photograph outweighed its prejudicial effect.

Photographic evidence is admissible to corroborate the testimony of witnesses on essential matters. See ***State v. Pooler***, 96-1794, pp. 42-43 (La. App. 1st Cir. 5/9/97), 696 So.2d 22, 50-51, writ denied, 97-1470 (La. 11/14/97), 703

So.2d 1288. We find no error with the trial court's rulings on the admissibility of the photographs. Each was highly probative in establishing the victim's cause of death, the location and placement of bruises, and provided positive identification of the victim. Because the evidentiary value of each of the photographs outweighs the potential for prejudice, the trial court's admission of these exhibits was not erroneous. This assignment of error lacks merit.

ASSIGNMENT OF ERROR NUMBER FOUR

Lastly, defendant contends the trial court erred in imposing unconstitutionally excessive sentences. Noting that maximum sentences were imposed, he claims that he is not the worst type of offender and the offenses are not of the worst type.

Article I, section 20, of the Louisiana Constitution prohibits the imposition of excessive punishment. The Louisiana Supreme Court in ***State v. Sepulvado***, 367 So.2d 762, 767 (La. 1979), held that a sentence that is within the statutory limits may still be excessive. 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. ***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. 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 pp. 10-11, 797 So.2d at 83.

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); ***State v. Faul***, 2003-1423, p. 4 (La. App. 1st Cir. 2/23/04), 873 So.2d 690, 692. Maximum sentences are reserved for cases involving the most serious offenses and the worst offenders. ***State v. Easley***, 432 So.2d 910, 914 (La. App. 1st Cir. 1983).

Prior to imposing the sentences, the trial court inquired of the defense whether it wanted to bring any mitigating factors to the court's attention. The defense attorney initially responded negatively, but added that defendant was a young man and that manslaughter is an unintentional crime. Defendant did not offer anything in addition to his attorney's comments. After stating that it had carefully studied the offenses and defendant's prior record, the trial court found, in part, that defendant's conduct manifested deliberate cruelty to the victim and pointed out that defendant knew or should have known that the victim was particularly vulnerable due to her youthful age and drug intake.[2] The losses suffered by the victim and her family were also noted by the trial court as well as the absence of any signs of remorse by defendant. In reviewing defendant's criminal record, the trial court indicated he had been charged with terrorizing,

[2] The victim's date of birth was August 17, 1985. Thus, she was nineteen years old at the time of the offenses.

aggravated assault, aggravated second degree battery, aggravated criminal damage to property, illegal use of weapons or dangerous instrumentalities, possession with intent to distribute a controlled dangerous substance, and possession of a firearm while in the possession of a controlled dangerous substances; mentioned his prior sentences served on aggravated assault, domestic abuse battery, and reckless operation of a vehicle, illegal use of a weapon or dangerous instrumentality, aggravated battery, and aggravated criminal damage to property convictions; and concluded that defendant was a danger to society.

Based on the record before us, we find the trial court did not abuse its discretion in imposing maximum, consecutive sentences. Defendant has an extensive criminal background. He took full advantage of the victim's vulnerability. Instead of calling an ambulance to have the unconscious victim revived, defendant took steps that ensured her death by suffocation. After committing the offenses, defendant went on an outing with friends as though nothing had happened. Defendant completely disregarded the well-being of the victim and fatally harmed her. His acts will have persistent effects on the victim's family. We find that defendant's acts constitute one of the worst types of manslaughter and obstruction of justice and that he is one of the worst types of offender. Considering the facts of the offenses, the sentences are not shocking or grossly disproportionate to defendant's behavior. This assignment of error is without merit.

DECREE

For these reasons, we affirm the convictions of and the sentences imposed against defendant, John Fitzgerald Bonvillain.

CONVICTIONS AND SENTENCES AFFIRMED.