NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2010 KA 0127

STATE OF LOUISIANA

VERSUS

JOSEPH WALDRON JOHNSON

Judgment Rendered: June 11, 2010

* * * * * * *

Appealed from the
Twenty-Second Judicial District Court
In and for the Parish of St. Tammany, Louisiana
Trial Court Number 406,426

Honorable William J. Knight, Judge

* * * * * * *

Walter P. Reed, District Attorney
Covington, LA
and
Kathryn Landry
Baton Rouge, LA

Attorneys for
State – Appellee

Frederick Kroenke
Baton Rouge, LA

Attorney for
Defendant – Appellant
Joseph Waldron Johnson

* * * * * *

BEFORE: WHIPPLE, HUGHES, AND WELCH, JJ.

WELCH, J.

The defendant, Joseph Waldron Johnson, was charged by bill of information with attempted second degree murder, a violation of La. R.S. 14:27 and 14:30.1. He pled not guilty and, following a jury trial, the defendant was found guilty of the responsive offense of aggravated battery, a violation of La. R.S. 14:34. The defendant filed a motion for post verdict judgment of acquittal, which was denied. He was sentenced to ten years imprisonment at hard labor. The defendant filed a motion to reconsider sentence, which was denied. The defendant now appeals, designating three assignments of error. We affirm the conviction and sentence.

FACTS

On September 9, 2005, at about 2:00 a.m., Quinton Richard, Gary Nordgren, Jr., and the defendant were talking and drinking beer on the porch of the defendant's trailer on Kuhn Road in Covington. Richard worked with the defendant and lived with him in the defendant's trailer. They both worked for the defendant's father's company. Nordgren had stopped by earlier that night to talk to the defendant about some work the defendant might have available for him. This period of time was shortly after Hurricane Katrina, and the defendant, with a small crew, was clearing out fallen trees from the property of neighbors.

The defendant and Nordgren became involved in an altercation. When the arguing subsided, Nordgren walked down the steps of the porch, and the defendant went inside. Moments later, the defendant came back outside with a Remington .243 automatic rifle and shot Nordgren in the right shoulder. Richard called 911. Because of the extent of his injury, Nordgren spent over a month in the hospital. As a result of his injury, Nordgren has very little use of his right arm.

Richard, Nordgren, and the defendant all testified at trial. Following his arrest, the defendant gave a taped statement to the police. Richard also gave a taped statement to the police. The statements were played for the jury at trial.

Each of these witnesses provided a somewhat different account of the events that transpired the night the defendant shot Nordgren.

Richard testified at trial that Nordgren and the defendant got into an argument about the defendant's ex-wife. Nordgren grabbed the defendant by the neck, put him against the trailer, and said, "Bitch, I'll kill you." Richard tried to break them up. Nordgren started walking to his truck. Richard did not hear Nordgren say anything as he walked away. The defendant retrieved a rifle and shot Nordgren. In his taped statement, Richard told Detective Dale Galloway, with the St. Tammany Parish Sheriff's Office, that the altercation between Nordgren and the defendant "almost" got physical. Richard did not see any punches or kicks thrown, and he did not see Nordgren with a weapon. Richard stated that he had no idea why the defendant shot Nordgren and that they were friends. At no time during his interview did Richard state that Nordgren said, "Bitch, I'll kill you." Detective Galloway testified at trial and confirmed that Richard, in his interview, never told him that Nordgren pushed the defendant against the trailer and said, "Bitch, I'll kill you."

Nordgren testified at trial that he had known the defendant over twenty years. On the night of the shooting, all three of them were drinking beer and smoking marijuana. Nordgren and the defendant got into an argument. Nordgren then sat down. The defendant threw a punch at Nordgren, which glanced off Nordgren's jaw. Nordgren grabbed the defendant and pushed him against the trailer. Out of respect for the defendant's two children who were in the trailer, Nordgren did not hit the defendant. Nordgren told the defendant he did not want to work for him and not to call him again. Nordgren walked to his truck and, shortly thereafter, Richard approached Nordgren asking about what had just transpired. Nordgren then heard the defendant scream, "You m-----f-----." When Nordgren turned, he saw the defendant on his porch with a rifle. The defendant then shot

Nordgren. Nordgren also testified that he did not say, "Bitch, I'll kill you." He further stated that he never told the defendant that he was going to his truck to get a gun. He testified he had no gun in his truck, and he never owned a 10mm automatic. Detective Stacey Callendar, with the St. Tammany Parish Sheriff's Office, testified at trial that no firearm was found in Nordgren's truck. Nordgren had two DWI convictions, a conviction for possession of cocaine, and three convictions for possession of marijuana.

The defendant testified at trial that he had known Nordgren for twenty years. According to the defendant, Nordgren was smoking marijuana, but the defendant was not because Nordgren would not share. He and Nordgren argued over the defendant's ex-wife. Nordgren began choking the defendant. Nordgren released his grip and told the defendant he was going to kill him. Nordgren walked off the porch. Frightened, the defendant went inside and retrieved a rifle. According to the defendant, he had always known Nordgren to carry a 10mm Glock automatic in his truck. When the defendant opened the door, he meant to fire a warning shot from his hip into the ground. Instead, from the threshold of his door, the defendant shot Nordgren in his shoulder. The defendant stated he did not aim the gun and that shooting Nordgren was an accident. The defendant did not see Nordgren with a gun, but assumed he had one since Nordgren said he was going to kill him and Nordgren's truck door was open. When he shot Nordgren, the defendant did not have his glasses on, which he usually wears for nearsightedness. Also, the defendant believed that the porch light was off when he shot Nordgren. The defendant had two DWI convictions and two convictions for possession of marijuana.

Bryan Krentel and Richard Bernos testified at trial for the defense. Krentel testified that he was in jail for DWI in 2008 when he saw Nordgren in a holding cell. Regarding the shooting, Nordgren told Krentel, who also knows the

defendant, that he (Nordgren) was mad at the defendant, he was going to his truck to get his gun, and he was going to kill that "son-of-a--." Krentel also had two convictions for simple battery.

Bernos testified at trial that he knew the defendant and the defendant's father and, to a lesser extent, Nordgren. Shortly after the shooting, the defendant's father asked Bernos to go to the hospital to see how Nordgren was doing. In the hospital room, Nordgren told Bernos that he and the defendant got into an argument. Nordgren said that he grabbed the defendant by the throat, strangled him until he passed out against the trailer, then let him go. The defendant "came to," went up the stairs, and inside the trailer. The defendant came back outside with a gun. According to Bernos, Nordgren said, "Oh, now you're a big, bad m-f-er." Nordgren told the defendant he could have killed him, but did not, and "[n]ow you're coming out with a gun and you're going to be all f-ing bad." Nordgren then started walking toward the defendant when the defendant shot him. Bernos had two DWI convictions and a conviction for possession of marijuana (or barbiturates).

ASSIGNMENT OF ERROR NUMBER 1

In his first assignment of error, the defendant argues the evidence was insufficient to support the conviction of aggravated battery. Specifically, the defendant contends that he shot Nordgren in self-defense.

A conviction based on insufficient evidence cannot stand as it violates Due Process. See U.S. Const. amend. XIV; La. Const. art. I, § 2. The standard of review for the 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 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). See also La. C.Cr.P. art. 821(B); **State v. Ordodi**, 2006-

0207, p. 10 (La. 11/29/06), 946 So.2d 654, 660; **State v. Mussall**, 523 So.2d 1305, 1308-1309 (La. 1988). The **Jackson** standard of review, incorporated in La. C.Cr.P. art. 821, is an objective standard for testing the overall evidence, both direct and circumstantial, for reasonable doubt. When analyzing circumstantial evidence, La. R.S. 15:438 provides that the factfinder must be satisfied the overall evidence excludes every reasonable hypothesis of innocence. See **State v. Patorno**, 2001-2585, p. 5 (La. App. 1st Cir. 6/21/02), 822 So.2d 141, 144. The testimony of the victim alone is sufficient to prove the elements of the offense. **State v. Orgeron**, 512 So.2d 467, 469 (La. App. 1st Cir. 1987), writ denied, 519 So.2d 113 (La. 1988).

While the defendant was charged with attempted second degree murder, he was found guilty of aggravated battery. Guilty of aggravated battery is a proper responsive verdict for a charge of attempted second degree murder. La. C.Cr.P. art. 814(A)(4).

Prior to the 2006 amendment, La. R.S. 14:19 provided:

> The use of force or violence upon the person of another is justifiable, when committed for the purpose of preventing a forcible offense against the person or a forcible offense or trespass against property in a person's lawful possession; provided that the force or violence used must be reasonable and apparently necessary to prevent such offense, and that this article shall not apply where the force or violence results in a homicide.

Louisiana Revised Statutes 14:21 provides:

> A person who is the aggressor or who brings on a difficulty cannot claim the right of self-defense unless he withdraws from the conflict in good faith and in such a manner that his adversary knows or should know that he desires to withdraw and discontinue the conflict.

Louisiana Revised Statutes 14:33 defines battery to include the intentional use of force or violence upon the person of another. Louisiana Revised Statutes 14:34 defines aggravated battery as a battery committed with a dangerous weapon.

The fact that the defendant shot Nordgren in the shoulder with a rifle is not

in doubt. The only remaining issue is whether the defendant acted in self-defense. In the non-homicide situation, a claim of self-defense requires a dual inquiry: first, an objective inquiry into whether the force used was reasonable under the circumstances; and second, a subjective inquiry into whether the force used was apparently necessary. **State v. Pizzalato**, 93-1415, p. 3 (La. App. 1st Cir. 10/7/94), 644 So.2d 712, 714, writ denied, 94-2755 (La. 3/10/95), 650 So.2d 1174.

In a homicide case, the State must prove, beyond a reasonable doubt, that the homicide was not perpetrated in self-defense. **State v. Spears**, 504 So.2d 974, 978 (La. App. 1st Cir.), writ denied, 507 So.2d 225 (La. 1987). However, Louisiana law is unclear as to who has the burden of proving self-defense in a non-homicide case, and what the burden is. **State v. Barnes**, 590 So.2d 1298, 1300 (La. App. 1st Cir. 1991).[1] In previous cases dealing with this issue, this court has analyzed the evidence under both standards of review, that is whether the defendant proved self-defense by a preponderance of the evidence or whether the State proved beyond a reasonable doubt that the defendant did not act in self-defense. In this case, we need not and do not decide the issue of who has the burden of proving (or disproving) self-defense because under either standard the evidence sufficiently established that the defendant did not act in self-defense. See **Pizzalato**, 93-1415 at p. 4, 644 So.2d at 714.

The evidence reflects conflicting versions of the incident which occurred between Nordgren and the defendant. Nordgren claimed that, after he pushed the defendant against his trailer, he (Nordgren) walked to his truck. While standing by his truck with Richard, Nordgren heard the defendant scream, "You m-----f-----." As Nordgren turned toward the defendant, he was shot by the defendant. According to Nordgren, he did not hit the defendant, he did not say, "I'll kill you"

---

[1] In **State v. Freeman**, 427 So.2d 1161, 1162-1163 (La. 1983), the Louisiana Supreme Court, without resolving the issue, suggested that the defendant in a non-homicide case may have the burden of proving self-defense by a preponderance of the evidence. See **Barnes**, 590 So.2d at 1300-1301.

to the defendant, and he did not walk to his truck to get a gun. The defendant, on the other hand, claimed that he shot Nordgren in self-defense because, after Nordgren had choked the defendant and told him he was going to kill him, Nordgren walked to his truck. According to the defendant, he knew Nordgren carried a gun in his truck. The defendant went inside to retrieve a rifle and, as he opened the door to go back outside, the defendant saw Nordgren walking back toward him. When asked at trial if he could see that Nordgren had a gun, the defendant responded, "No, I could not. I had to assume he had a gun because I was scared." The defendant maintained that, while he shot Nordgren in self-defense, he also shot Nordgren accidentally since his intention was only to fire a warning shot in Nordgren's direction.

In finding the defendant guilty of aggravated battery, it is clear the jury accepted Nordgren's version of the events and rejected the claim of self-defense, concluding that the scenario of self-defense, as suggested by the defendant, was not reasonable. Given the manner in which the defendant shot Nordgren - either from a distance while Nordgren was standing by his truck or at a closer range while Nordgren was walking back toward the defendant's trailer - the jury could have concluded that the force used by the defendant against Nordgren was neither reasonable nor necessary to prevent an attack, particularly since Nordgren was unarmed. See **State v. Wilson**, 613 So.2d 234, 239 (La. App. 1st Cir. 1992), writ denied, 93-0533 (La. 3/25/94), 635 So.2d 238.

Even assuming that Nordgren was initially the aggressor, it was unreasonable for the defendant to respond with deadly force. See **State v. Taylor**, 97-2261, p. 6 (La. App. 1st Cir. 9/25/98), 721 So.2d 929, 932. Once Nordgren had walked away, and the defendant went inside and grabbed his gun, the defendant abandoned the role of defender, and took on the role of aggressor and, as such, was not entitled to claim self-defense. See La. R.S. 14:21; **State v. Tran**, 98-2812, p.

21 (La. App. 1st Cir. 11/5/99), 743 So.2d 1275, 1291, writ denied, 99-3380 (La. 5/26/00), 762 So.2d 1101. Even assuming as true that Nordgren stated, "I'm going to kill you," there is nothing in the facts to suggest the defendant was in any real danger of being killed. A juror could have reasonably concluded that Nordgren simply made such a statement out of anger following the clash between him and the defendant, or, if that portion of Nordgren's version is to be believed, following the defendant's action in striking Nordgren without provocation.

The trier of fact is free to accept or reject, in whole or in part, the testimony of any witness. **Taylor**, 97-2261 at p. 5, 721 So.2d at 932. We are constitutionally precluded from acting as a "thirteenth juror" in assessing what weight to give evidence in criminal cases. **State v. Mitchell**, 99-3342, p. 8 (La. 10/17/00), 772 So.2d 78, 83. The fact that the record contains evidence which conflicts with the testimony accepted by a trier of fact does not render the evidence accepted by the trier of fact insufficient. **State v. Quinn**, 479 So.2d 592, 596 (La. App. 1st Cir. 1985).

An appellate court will not reweigh the evidence to overturn a factfinder's determination of guilt. **Taylor**, 97-2261 at p. 6, 721 So.2d at 932. A determination of the weight of the evidence is a question of fact. This court has no appellate jurisdiction to review questions of fact in criminal cases. La. Const. art. V, § 10(B). See **Spears**, 504 So.2d at 978.

After a thorough review of the record, we find that the evidence supports the jury's verdict. We are convinced that viewing the evidence in the light most favorable to the State, any rational trier of fact could have found beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, that, in shooting Nordgren who was unarmed and posed no immediate threat to the defendant, the defendant did not shoot Nordgren in self-defense and, as such, was guilty of aggravated battery. See **State v. Calloway**, 2007-2306, pp.

1-2 (La. 1/21/09), 1 So.3d 417, 418 (per curiam).

This assignment of error is without merit.

ASSIGNMENT OF ERROR NUMBER 2

In his second assignment of error, the defendant argues the trial court erred in denying his request to question Nordgren regarding a pending charge against him. Specifically, the defendant contends that the pending charge against Nordgren was relevant to his motivation for testifying.

Prior to voir dire, the defense counsel informed the trial court that he filed a motion to reveal the deal concerning Nordgren in reference to charges pending against him. The defense counsel noted he had been told by the State that no deal had been made and asked the State to confirm its assertion for the record. The prosecutor first noted defense counsel had open-file discovery. He then informed the trial court that no deal had been made with Nordgren for him to testify. According to the prosecutor, Nordgren's pending charge was for aggravated incest.

Following selection of the jury but prior to opening statements, the prosecutor asked for a ruling on a motion in limine to prevent the defense from referring during trial to Nordgren's pending charge for which he had not been convicted. In finding no evidence of any deal having been made with Nordgren, and no evidence of any sentence, lenient or otherwise, the trial court ruled that evidence of an arrest and charge is not admissible. The trial court cautioned the State, however, to make an immediate revelation of any such deal of which the trial court was not aware that had been made or offered, or had been discussed in any way with Nordgren, since such information would constitute **Brady** material. To this ruling, the prosecutor stated:

> Your Honor, for the record, I have spoken to Ms. Leigh Ann Wall and to Scott Gardner [prosecutors]. They have both indicated to me that no deal or no promises have ever been made to Gary Nordgren, and certainly since I've been on this case, I haven't made any promises or anything like that to Gary Nordgren or his counsel.

Generally, only offenses for which the witness has been convicted are admissible upon the issue of his credibility, and no inquiry is permitted into matters for which there has only been an arrest, the issuance of an arrest warrant, an indictment, a prosecution, or an acquittal. La. C.E. art. 609.1(B). However, extrinsic evidence to show a witness's bias, interest, corruption, or defect of capacity is admissible to attack the credibility of the witness. La. C.E. art. 607(D)(1).

The defendant's right to confront and cross-examine witnesses, found in the Sixth Amendment to the United States Constitution, is a fundamental right and applicable to the states through the Fourteenth Amendment. **Pointer v. Texas**, 380 U.S. 400, 403, 85 S.Ct. 1065, 1068, 13 L.Ed.2d 923 (1965). In addition, this right to confrontation is found in the Louisiana Constitution. See La. Const. art. I, § 16. In order to cross-examine a witness effectively, a defendant must be afforded the opportunity to demonstrate any bias or self-interest which is attached to a witness's testimony. **Davis v. Alaska**, 415 U.S. 308, 318, 94 S.Ct. 1105, 1111, 39 L.Ed.2d 347 (1974). See **State v. Rankin**, 465 So.2d 679, 681 (La. 1985).

A cross-examiner is allowed wide latitude in exploring any facts that might support an inference of bias. The possibility that the prosecution may have leverage over a witness due to that witness's pending criminal charges is recognized as a valid area of cross-examination. **Rankin**, 465 So.2d at 681. To the extent exposure of a witness's motivation is a proper and important function of the constitutionally protected right of cross-examination, a witness's hope or knowledge that he will receive leniency from the State is highly relevant to establish his bias or interest. **State v. Vale**, 95-1230, p. 4 (La. 1/26/96), 666 So.2d 1070, 1072 (per curiam). A witness's bias or interest may arise from arrests or pending criminal charges, or the prospect of prosecution, even when he has made no agreements with the State regarding his conduct. *Id.* See **State v. Nash**, 475

So.2d 752, 754-756 (La. 1985); **State v. Brady**, 381 So.2d 819, 822 (La. 1980).

In the instant matter, arguably the trial court should have allowed defense counsel to cross-examine Nordgren about his pending charge. However, Sixth Amendment confrontation errors are subject to harmless error analysis. The correct inquiry is whether the reviewing court, assuming that the damaging potential of the cross-examination were fully realized, is nonetheless convinced that the error was harmless beyond a reasonable doubt. **Delaware v. Van Arsdall**, 475 U.S. 673, 684, 106 S.Ct. 1431, 1438, 89 L.Ed.2d 674 (1986). Factors to be considered by the reviewing court include the importance of the witness's testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and the overall strength of the prosecution's case. **Van Arsdall**, 475 U.S. at 684, 106 S.Ct. at 1438. See **State v. Burbank**, 2002-1407, p. 3 (La. 4/23/04), 872 So.2d 1049, 1051 (per curiam).

Even assuming such error by the trial court in this case, we would find such error harmless beyond a reasonable doubt. See La. C.Cr.P. art. 921. The prosecutor informed the trial court that neither he, nor any other prosecutor that he had spoken to, made any promise or offered any deal to Nordgren regarding his pending charge. Further, Nordgren's pending charge of aggravated incest was completely unrelated to the charge of attempted second degree murder in the instant matter.[2] Even had defense counsel been allowed to cross-examine Nordgren regarding his pending charge, we do not see how such testimony would have affected the guilty verdict, given the overwhelming evidence of guilt. The defendant admitted that he shot Nordgren without knowing whether or not

[2] At the pretrial hearing on this issue, the prosecutor informed the trial court that the allegation against Nordgren for aggravated incest occurred after the shooting in the instant matter.

Nordgren possessed a weapon. The evidence established that Nordgren was not armed when the defendant shot him and that no gun was found in Nordgren's truck. Accordingly, we conclude that, while the trial court arguably erred in denying defense counsel the opportunity to cross-examine Nordgren about his pending charge, the guilty verdict actually rendered in this trial would surely have been unattributable to any such error. See **Sullivan v. Louisiana**, 508 U.S. 275, 279, 113 S.Ct. 2078, 2081, 124 L.Ed.2d 182 (1993).

This assignment of error is without merit.

ASSIGNMENT OF ERROR NUMBER 3

In his third assignment of error, the defendant argues that his sentence is excessive. Specifically, the defendant contends that he received the maximum sentence, yet he is not the worst offender and this is not the worst offense.

The Eighth Amendment to the United States Constitution and Article I, § 20, of the Louisiana Constitution prohibit the imposition of excessive punishment. Although a sentence falls within statutory limits, it may be excessive. **State v. Sepulvado**, 367 So.2d 762, 767 (La. 1979). A sentence is considered constitutionally excessive if it is grossly disproportionate to the seriousness of the offense or is nothing more than a purposeless and needless infliction of pain and suffering. A sentence is considered grossly disproportionate if, when the crime and punishment are considered in light of the harm done to society, it shocks the sense of justice. **State v. Andrews**, 94-0842, pp. 8-9 (La. App. 1st Cir. 5/5/95), 655 So.2d 448, 454. The trial court has great discretion in imposing a sentence within the statutory limits, and such a sentence will not be set aside as excessive in the absence of a manifest abuse of discretion. **State v. Holts**, 525 So.2d 1241, 1245 (La. App. 1st Cir. 1988). Louisiana Code of Criminal Procedure article 894.1 sets forth the factors for the trial court to consider when imposing sentence. While the entire checklist of La. C.Cr.P. art. 894.1 need not be recited, the record must

reflect the trial court adequately considered the criteria. **State v. Brown**, 2002-2231, p. 4 (La. App. 1st Cir. 5/9/03), 849 So.2d 566, 569.

The articulation of the factual basis for a sentence is the goal of La. C.Cr.P. art. 894.1, not rigid or mechanical compliance with its provisions. Where the record clearly shows an adequate factual basis for the sentence imposed, remand is unnecessary even where there has not been full compliance with La. C.Cr.P. art. 894.1. **State v. Lanclos**, 419 So.2d 475, 478 (La. 1982). The trial judge should review the defendant's personal history, his prior criminal record, the seriousness of the offense, the likelihood that he will commit another crime, and his potential for rehabilitation through correctional services other than confinement. See **State v. Jones**, 398 So.2d 1049, 1051-1052 (La. 1981).

In the instant matter, the trial court imposed the maximum sentence of ten years at hard labor. See La. R.S. 14:34. This court has stated that maximum sentences permitted under statute may be imposed only for the most serious offenses and the worst offenders, or when the offender poses an unusual risk to the public safety due to his past conduct of repeated criminality. **State v. Hilton**, 99-1239, p. 16 (La. App. 1st Cir. 3/31/00), 764 So.2d 1027, 1037, writ denied, 2000-0958 (La. 3/9/01), 786 So.2d 113. The defendant contends that, while this may have been one of the worst offenses, he is clearly not one of the worst offenders.

At sentencing, the trial court stated in pertinent part:

> The Court has also been provided with a pre-sentence investigation, which outlines Mr. Johnson's past, insofar as his involvement with the criminal justice system is concerned, as well as his recollection as to how this incident took place, and input from Mr. Nordgren, as the victim of the crime.
>
> The Court is not in a position today to try this case, that matter has occurred. And the jury, having ample evidence upon which to base a conviction, chose to convict for aggravated battery, rather than for attempted second degree murder.
>
> As the Court reviewed the pre-sentence investigation I couldn't help but be sad. The reason that I was sad is because some things in

life are tremendously, tremendously predictable.

April 6, 1989, Tangipahoa Parish Louisiana, driving while intoxicated, failure to maintain control. Plead guilty to DWl, 30 years [sic] parish jail, suspended, one year probation. The second count was dismissed.

1/5/1992, second degree battery, disturbing the peace, resisting arrest by flight, lewd conduct. All charges refused.

5/17/1996, St. Tammany Parish, driving while intoxicated, improper equipment, possession of marijuana, possession of paraphernalia.

12/17/96, Plead guilty to DWl, two years probation, nolle prosed [sic] remaining charges.

5/3/1999, possession marijuana, Jefferson County Texas, less than five pounds, more than four ounces. Deferred adjudication of guilt, three years probation on August 7, 2000.

April 21, 2000, St. Tammany Sheriff's Office. Second degree battery, refused, no Bill filed, turned over to Texas.

3/19/2002, St. Tammany, driving while intoxicated, speeding, reckless operation.

10/16/2003, plead guilty to DWI one. Perhaps that's someone standing between the action and the consequences. Six months parish jail, suspended, two years probation.

Revoked 11/3/2006. Other counts nolle prosed [sic].

September 8, 2003, St. Tammany Sheriff's Office. Simple battery, resisting arrest, outstanding non-support warrant. Nolle prosed [sic], referred to family court.

9/12/2004, St. Tammany Parish. Driving while intoxicated, driving under suspension, careless operation, speeding.

8/1/2006, plead guilty to DWI two. Two, three -- whatever. Six months parish jail, suspended, two years probation.

9/9/2005, the instant charge.

What's so sad about that? Repeated opportunities to learn from our past mistakes totally, totally ignored. One of the things that sometimes frustrates me in this job is that I deal with people who aren't smart enough to do any better. They do the best they can with the cards they were dealt. Mr. Johnson is an honor's [sic] graduate from St. Paul's; maintained the Dean's list at times while he was at Southeastern. As my grandpa would say, "Had the world by the tail." And was given break, after break, after break, after break. And now

we stand here for predictable consequences. Some things are real easy to predict, and this path started April 6, 1989. We haven't deviated from that path till this day, not till this day.

894.1 of the Code of Criminal Procedure sets forth the sentencing guidelines that are to guide the Court.

The question is whether or not there's an undue risk that during the period of suspended sentence or probation the defendant would commit another crime. That reads like an index of how to commit another crime.

Whether or not the defendant is in need of correctional treatment or custodial environment. Probation sure hasn't worked.

Whether or not a lesser sentence would depreciate [sic] the seriousness of the defendant's crime. Today I hear, somehow, the victim is not worthy, therefore it lessens the seriousness of the crime. God didn't create a human being who is not equally worthy. Not a one. Some of us have acted better than others; some of us have acted worse than others. The thing that is totally consistent is that we all have to answer for our own actions. Mr. Nordgren, if he's got things to answer for, will answer for them. But you're answering for shooting that man today. But for the grace of God, he'd be dead. I've seen the injuries. He's going to carry those around the rest of his life. He's never going to use that arm properly. Right now you can't use your arms because they're handcuffed to your waist. He'll never use that one because it's, in essence, handcuffed to his waist. That's something to think about every day.

The Court finds that any sentence less than that which it's going to impose would depreciate [sic] the seriousness of the offense.

Considering the trial court's careful, thorough review of the circumstances, the presentence investigation report, and the nature of the crime, we find no abuse of discretion by the trial court. The trial court's reasons and the presentence investigation report provided ample justification for the imposition of the maximum sentence allowed by law. With his chronic criminal behavior that spans over fifteen years, and what appears to be a complete disregard for the law, we find the defendant to be the worst type of offender. See **State v. Mickey**, 604 So.2d 675, 679 (La. App. 1st Cir. 1992), writ denied, 610 So.2d 795 (La. 1993). We find, as well, shooting an unarmed man to be the worst type of offense in the category of aggravated battery, given that such reckless behavior could have easily resulted in

the victim's death. As noted by the trial court in its reasons for sentencing, "But for the grace of God, he'd be dead." Moreover, the defendant poses an unusual risk to the public safety due to his past conduct of repeated criminality. See **Hilton**, 99-1239 at p. 16, 764 So.2d at 1037. Accordingly, the sentence imposed is not grossly disproportionate to the severity of the offense and, therefore, is not unconstitutionally excessive.

This assignment of error is without merit.

CONCLUSION

For the foregoing reasons, the defendant's conviction and sentence are affirmed.

CONVICTION AND SENTENCE AFFIRMED.