

NOT DESIGNATED FOR PUBLICATION

COURT OF APPEAL

STATE OF LOUISIANA

FIRST CIRCUIT

2008 KA 0365

STATE OF LOUISIANA

VERSUS

MARQUIS DALTON

Judgment rendered: OCT 31 2008

**On Appeal from the 19th Judicial District Court
Parish of East Baton Rouge, State of Louisiana
Case Number 03-05-0013; Sec: 1**

The Honorable Anthony J. Marabella, Jr., Judge Presiding

**Honorable Doug Moreau
District Attorney**

**Counsel for Appellee
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Marquis Dalton**

BEFORE: CARTER, C.J., WHIPPLE AND DOWNING, JJ.

Handwritten initials and signatures:
RJR
[Signature]
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DOWNING, J.

Defendant, Marquis Dalton, was charged by bill of information with attempted armed robbery, a violation of La. R.S. 14:27 and 14:64 (Count 1), and possession of a firearm by a convicted felon, a violation of La. R.S. 14:95.1 (Count 2).¹ Defendant pled not guilty and proceeded to trial before a jury. The jury determined defendant was guilty as charged on both counts.

The State instituted habitual offender proceedings. Following a hearing, the trial court adjudicated defendant a third felony habitual offender. The trial court then sentenced defendant as a third felony habitual offender on Count 1 to forty years at hard labor without benefit of probation, parole, or suspension of sentence. The trial court also sentenced defendant on Count 2 to ten years at hard labor without benefit of probation, parole, or suspension of sentence, with this sentence to be served concurrently with defendant's sentence on Count 1.

Defendant appeals, with his sole assignment of error alleging the trial court imposed an unconstitutionally excessive sentence on Count 1. We affirm defendant's convictions, habitual offender adjudication, and sentences.

FACTS

On the evening of December 23, 2004, Celeste Brown met Joshua Furr at his workplace, and the pair left in his vehicle to have dinner and see a movie. After the movie, Furr drove Brown to where her vehicle was parked at his place of employment. As he waited for Brown to get into her vehicle, Furr noticed a truck on the service road behind the building. Brown had been having problems with her car alarm, and when she opened the driver's-side door, the alarm activated. When Brown's car alarm went off, Furr noticed that the truck turned on its lights and backed away.

¹ We note defendant's sentence on Count 2 is illegally lenient in that the trial court failed to impose a mandatory fine. La. R.S. 14:95.1(B). We decline to correct such error. See *State v. Price*, 2005-2514 (La. App. 1 Cir. 12/28/06), 952 So.2d 112 (en banc), writ denied, 2007-0130 (La. 2/22/08), 976 So.2d 1277.

Furr began driving to Brown's parents' house as Brown followed him in her vehicle. Furr noticed that the truck that was parked on the service road appeared to be following them. As they proceeded to Brown's residence, Furr called Brown on her cell phone to make her aware they were being followed. Furr, with Brown following him, made several unnecessary turns on his way to her parents' residence in order to verify that the truck was following them. When the truck made every turn they did, Furr figured the truck driver was concerned because Brown's car alarm was still activated.

After ten to fifteen minutes, Furr and Brown arrived at her parents' residence. Furr pulled into the driveway first, while Brown parked behind him. Furr noticed that the truck drove past the residence and then turned around in the next driveway. Furr left his door open and the truck running and walked to the end of the driveway, intending to let the truck driver know that nothing was wrong.

The truck stopped and the driver of the truck, later identified as defendant, initiated a conversation with Furr by asking Furr if he had a problem. Furr tried to explain to defendant that he was curious as to why defendant had followed them to Brown's residence. Defendant denied that he had followed them, so Furr apologized. Defendant then repeatedly asked Furr if he had a problem and whether he wanted to "do something about it" or fight. Furr apologized several times and tried to explain to defendant that the situation was a misunderstanding. Brown eventually walked towards them and stood behind Furr.

While Furr was standing on the curb, defendant exited his truck and was handed a rifle by a passenger in the truck. Defendant walked towards Furr and Brown, pointed the rifle at Furr and said, "I want your vehicle." Furr, backing away told defendant to take his truck. Defendant paused, looked back at the two occupants in his own truck, and eventually circled back towards them. Brown became upset and attempted to call someone on her cell phone. Defendant noticed

what she was doing and demanded, “Who the f--- are you calling?” Furr removed the phone from Brown’s hand and placed it into his pocket.

Defendant backed towards his vehicle and put the rifle down. Furr and Brown began running toward the residence and defendant got back into his truck and left. Once inside, Furr contacted the police. Defendant was apprehended later that evening. The police seized a loaded Marlin .30-30 rifle from his vehicle. Furr testified at trial that he was fearful of his life during the incident.

Defendant did not testify at trial.

Following the jury’s guilty verdict, the State instituted habitual offender proceedings against defendant. The trial court adjudicated defendant a third felony habitual offender based on his prior convictions of a January 13, 2000 guilty plea to accessory after the fact to second degree murder in docket number 10-99-461 of the Nineteenth Judicial District Court for East Baton Rouge Parish; and a July 17, 2000 guilty plea to simple burglary of an inhabited dwelling in docket number 3-00-706 also of the Nineteenth Judicial District Court.

As a result of defendant’s adjudication as a third felony offender, the trial court enhanced defendant’s sentence for his conviction for attempted armed robbery (Count 1) and ordered defendant to serve a term of forty years at hard labor without benefit of probation, parole, or suspension of sentence.

EXCESSIVE SENTENCE

In defendant’s sole assignment of error, he argues the trial court’s forty-year sentence is excessive and unwarranted.

Article I, § 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 the statutory limits, and the sentence imposed should not be set aside as excessive in the absence of manifest abuse of discretion. **State v. Hurst**, 99-2868, pp. 10-11 (La. App. 1st Cir. 10/3/00), 797 So.2d 75, 83.

The Louisiana Code of Criminal Procedure sets forth items that must be considered by the court before imposing sentence. La. Code Crim. 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. **State v. Herrin**, 562 So.2d 1, 11 (La. App. 1st Cir. 1990). In light of the criteria by Article 894.1, a review for individual excessiveness should consider the circumstances of the crime, the trial court's stated reasons and the factual basis for its sentencing decision. **State v. Watkins**, 532 So.2d 1182, 1186 (La. App. 1st Cir. 1988). Remand for full compliance with Article 894.1 is unnecessary when there is sufficient factual basis for the sentence. **State v. Lanclos**, 419 So.2d 475, 478 (La. 1982).

Because defendant's conviction for attempted armed robbery was enhanced due to his adjudication as a third felony habitual offender, the applicable sentencing range was thirty-three to ninety-nine years. La. R.S. 14:27(D)(3) & 64(B) & 15:529.1(A)(1)(b)(i). Defendant received a sentence of forty years at hard labor without benefit of parole, probation, or suspension of sentence.

On appeal, defendant argues he should have received a lesser sentence because the evidence adduced at trial fails to show defendant intended to rob Furr of his truck. We disagree and reiterate that the sufficiency of evidence supporting defendant's conviction is not at issue in this appeal. The jury clearly found defendant intended to rob Furr.

Further, the record clearly reflects the trial court considered defendant's age of twenty-eight years and the fact he had a supportive family and young daughter. The evidence presented at the sentencing hearing by the defense witnesses portrayed defendant as a polite person who had held a job since his initial release from prison. However, after hearing defendant's testimony at the sentencing hearing, the trial court found defendant was still trying to avoid responsibility for this crime due to his continued denial that he followed Furr to Brown's parents' residence. The trial court also noted defendant's statement that his act of pointing the rifle at Furr was not serious. The trial court also found defendant's explanation that he thought Furr was "challenging" him to be unbelievable given the fact the evidence at trial indicated defendant had deliberately followed Furr and Brown to Brown's residence on the night of this incident.

The trial court noted defendant's two prior felony convictions of accessory after the fact to second degree murder and simple burglary of an inhabited dwelling and reminded defendant that, at the time of this offense, defendant was on parole for his two previous convictions and was aware he was prohibited from having a weapon. The trial court also recognized that defendant had two 1998 guilty pleas to the offenses of resisting an officer and shoplifting in North Carolina. Finally, the trial court noted that although Furr and Brown were not physically harmed during this incident, they had been emotionally scarred.

Based on the evidence surrounding the circumstances of this crime and defendant's past criminal history, we cannot say the trial court abused its discretion in sentencing defendant to forty years at hard labor. The sentence imposed by the trial court was less than half of the penalty that defendant could have received. Under the circumstances of this crime, we cannot say the trial court's sentence was excessive. We note that defendant does not contest his concurrent sentence for Count 2.

This assignment of error is without merit.

DECREE

For the above stated reasons we affirm the convictions, habitual offender adjudication and sentences.

**CONVICTIONS, HABITUAL OFFENDER ADJUDICATION, AND
SENTENCES AFFIRMED**