

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2011 KA 2007

STATE OF LOUISIANA

VERSUS

MELODY LEBLANC

Judgment Rendered: June 8, 2012

Appealed from the
23rd Judicial District Court
In and for the Parish of Ascension, Louisiana
Trial Court Number 26,161

Honorable Jane Triche Milazzo, Judge

Ricky Babin, District Attorney
Gonzales, LA
and
Donald Candell, Asst. D.A.
Gonzales, LA
and
O'Neil Parenton, Jr.
Donaldsonville, LA

Attorneys for
State – Appellee

Lieu T. Vo Clark
Mandeville, LA

Attorney for
Defendant – Appellant
Melody LeBlanc

BEFORE: PETTIGREW, McCLENDON, AND WELCH, JJ.

WELCH, J.

The defendant, Melody LeBlanc, was charged by bill of information with one count of aggravated second degree battery, a violation of La. R.S. 14:34.7. She pled not guilty. Following a jury trial, the defendant was convicted as charged. The defendant was subsequently sentenced to twelve years imprisonment at hard labor. After sentencing, the defendant filed several motions, including a motion to reconsider sentence, which were denied. The defendant now appeals, urging in both counseled and pro se briefs that her sentence is unconstitutionally excessive and that the trial court erred in denying the motion to reconsider sentence. For the reasons set forth below, we affirm the defendant's conviction and sentence.

FACTS

On the night of October 31, 2009, the victim, Brittany Williams; her sister, Lanice Nolbert; a friend, Crystal Phillip; and the victim's boyfriend, Dontrell Lewis, were at a club in Donaldsonville.¹ The victim's sister was leaving the next day and they were enjoying their last night together. The defendant was also at the club, along with several of her friends. The victim and the defendant knew each other and there was no history of animosity between them.

The victim saw the defendant three times while inside the club. She first noticed the defendant when she walked into the club. She later passed the defendant after she stopped to visit with her aunt, who was celebrating her birthday. When she passed the defendant, she accidentally stepped on the defendant's shoe. The victim quickly apologized and nothing more was said.

The third encounter occurred when the victim was dancing with Ms. Phillip. The defendant, who was holding a champagne glass in her hand, pushed in

¹ In the record, Mr. Lewis is referred to as the victim's "spouse."

between the victim and Ms. Phillip. Initially, the defendant was facing Ms. Phillip. Suddenly, the defendant turned around and hit the victim in the face with her champagne glass. When the defendant struck her with the glass a second time, the victim fell to the floor. The defendant then jumped on top of the victim and continued the attack.

The victim's sister was outside when the attack began. When she walked back into the club, she saw the defendant on top of her sister. Ms. Phillip, who was close to the victim throughout the attack, pulled her friend up from the floor and away from the gathering crowd. Ms. Phillip then helped her friend out of the club.

The defendant then pursued the victim outside to continue the fight. Once outside the club, the victim collapsed and fell to the ground. By this time, Mr. Lewis was able to reach her. He picked the victim up from the ground and carried her about one block to their home.

Deputy Brad Gomez responded to the scene. A bystander told the officer that the victim had been "stabbed." When Deputy Gomez arrived at the victim's house, he observed that the victim was bleeding profusely. An ambulance was called, and the victim was taken to the emergency room at St. Elizabeth Hospital in Gonzales.

Deputy Gomez followed the ambulance to the hospital. At the hospital, he questioned the people there and gathered the names of three people, Ms. Nolbert, Ms. Phillip, and Mr. Lewis, who witnessed the events. He took statements from these witnesses at the hospital, which led to the defendant being investigated as a suspect in the incident. He also took pictures of the victim's wounds.

The victim suffered from multiple lacerations over the midline of her face and upper lip, which required suturing. She also suffered lacerations on the left side of her face, both sides of her forehead, and on the left side of her skull. She had abrasions on the right side of her neck and a laceration on the left side of her

neck. Moreover, she required staples for two lacerations she had on her left anterior chest just above her breast. The victim had lacerations on her right hand that were sutured. She was unable to bend her right index finger. The emergency room physician placed the victim's right hand in a splint to immobilize it at the wrist and fingers. The surgeon consulting on her case ordered an orthopedic consultation to evaluate the right index finger for possible flexor tendon injury. At trial, the victim testified that she cannot bend her finger and can only move it up and down.

The victim also suffered from anemia due to blood loss, and she received a transfusion. She remained in the hospital for monitoring and was not discharged until her blood count was stabilized.

Subsequently, Deputy Gomez met with the defendant. He noticed she had several lacerations to her right hand. He photographed the injuries to the defendant's hand. He did not observe any other injuries on the defendant.

At trial, the defense called Rodreka LeBlanc, Betty James, Alexia Etienne, and Keiama Sherman, all friends of the defendant, who provided strikingly similar accounts. They identified the victim and her friend, Ms. Phillip, as the aggressors that night, and each witness testified that Ms. Phillip started a fight with the defendant, that the victim came up behind the defendant, and the victim hit the defendant on the back of the head with a beer bottle. Two of the defense witnesses identified the bottle as a Budweiser beer bottle.

Each of the defense's witnesses emphasized that the defendant only used her fist against the victim and Ms. Phillip. Two of the witnesses implied other club patrons joined in the ensuing bedlam and threw punches. Ms. James and Ms. Sherman testified that they left the club immediately after the fight began between the victim and the defendant. Ms. Etienne testified that she stayed until the fight was broken up and the crowd moved outside. Notably, Ms. Etienne testified that

she did not see any blood on the victim. Ms. LeBlanc testified that she did not know how the victim received the multiple lacerations.

DISCUSSION

The sentence for aggravated second degree battery provides that an offender shall be fined not more than ten thousand dollars or imprisoned, with or without hard labor, for not more than fifteen years, or both. La. R.S. 14:34.7(B). The defendant was sentenced to twelve years imprisonment at hard labor. The defendant urges the sentence is too severe in light of the particular circumstances of the case. The defendant is a first offender with no prior convictions. She is a single mother of five children, including one with Down syndrome. At the sentencing hearing, the defendant spoke of her efforts to rehabilitate herself since her incarceration, such as trying to get her G.E.D. and joining life skill classes. She also advised the trial court that, out of the three dorms at her prison, correctional officers selected her to speak to Judge Ralph Tureau's class as to how she is changing her life. The defendant avers that she is not the worst of offenders and that sentences close to the maximum sentence should be reserved for the worst offenders.

The Eighth Amendment to the United States Constitution and Article I, § 20, of the Louisiana Constitution prohibit the imposition of excessive or cruel 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. **State v. Andrews**, 94-0842 (La. App. 1st Cir. 5/5/95), 655 So.2d 448, 454. 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. *Id.*

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); see also La. C.Cr.P. art. 881.4(D). 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 (La. App. 1st Cir. 5/9/03), 849 So.2d 566, 569.

In the instant case, prior to sentencing, the trial court requested and received a presentencing investigation report (PSI). The PSI was made available to the defendant, and the trial court ordered her to produce any mitigating evidence. At sentencing, it is clear that the trial court considered La. C.Cr.P. art. 894.1. The trial court articulated that it was cognizant of the particular circumstances, which on appeal, the defendant contends require a finding that the sentence is unconstitutionally excessive. Specifically, the trial court noted this is the defendant's first felony conviction. She is a thirty-one-year-old, unmarried mother of five children, and one of her children has Down syndrome. Also, the trial court considered the numerous letters the defendant, her family, and her friends wrote on her behalf.

Moreover, it is clear that the trial court carefully reviewed the information provided in the PSI. It noted the defendant has never held a job and has only completed the seventh grade. The PSI also revealed that prior to this offense, the defendant was arrested seven times for crimes against a person and was arrested three times for such crimes after committing the instant offense.

The trial court also considered the defendant's conduct during the commission of the offense, finding her conduct manifested deliberate cruelty to the

victim. This finding is supported by the record, as it shows the attack on the victim was unprovoked, particularly brutal, and continued even after the victim collapsed. While the trial court believed that the defendant's imprisonment would entail hardship to her children, it could not ignore that the victim sustained permanent, disfiguring injuries, and found a lesser sentence would deprecate the seriousness of the defendant's crime.

Lastly, the trial court found the defendant was in need of correctional treatment that could be provided most effectively by her commitment to an institution. We note that this finding is consistent with the defendant's self-reported efforts to utilize the correctional treatment and programs available to her since incarceration. As the trial court noted after sentencing, it hoped the defendant would take this time to complete her G.E.D. and to work on those life skills that are so desperately needed.

For the reasons stated above, we find the defendant has failed to show the trial court abused its great discretion in imposing sentence in this case. Therefore, the trial court correctly denied the motion to reconsider sentence. These assignments of errors are meritless.

CONCLUSION

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

CONVICTION AND SENTENCE AFFIRMED.