NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2006 KA 2198

STATE OF LOUISIANA

VERSUS

STEPHEN H. FIELDS

Judgment Rendered:

MAY - 4 2007

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On appeal from the
Twenty-Second Judicial District Court
In and for the Parish of St. Tammany
State of Louisiana
Suit Number 393996

Honorable Raymond S. Childress, Presiding

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BEFORE: PARRO, GUIDRY, AND McCLENDON, JJ.

GUIDRY, J.

The defendant, Stephen H. Fields, was charged by bill of information with one count of armed robbery, a violation of La. R.S. 14:64, and pled not guilty. Following a jury trial, the jury returned a compromised verdict finding him guilty of the responsive offense of attempted first-degree robbery, a violation of La. R.S. 14:27 and 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 fifteen years at hard labor without benefit of probation, parole, or suspension of sentence. He moved for reconsideration of sentence, but the motion was denied. He now appeals, designating two assignments of error. For the reasons stated below, his conviction and sentence are affirmed.

FACTS

The victim, Cynthia Christon, testified at trial. In October of 2004, she was unable to work and would receive a social security check on the first day of the month. On October 2, 2004, at approximately 6:00 p.m. to 6:30 p.m., M.G., a white male juvenile[1] whom the victim had seen before, knocked on the front door of the victim's home and asked for a cigarette. According to the victim, after the victim came to the door, M.G. looked into her home "like was anybody in there [with her]." The victim was alone. She told M.G. that she did not have a cigarette. The victim asked M.G. who sent him to her house, and he stated his brother, Travel Watts, had sent him. The victim told M.G. to tell Watts not to send anyone to her house and M.G. went away.

At approximately 7:30 p.m. to 7:45 p.m., there was another knock on the victim's door. The victim asked who was at her door, and the person outside identified himself as "Arthur." The victim knew an Arthur, but when she looked

[1] Two juveniles, D.W. and M.G, were also charged in the same bill of information with the same offense.

out of her bedroom window, she saw "Stephon"[2] outside of her door and saw a black male whom she did not know standing towards the street. The victim had never seen "Stephon" before and his face was partially covered. When the victim opened her door, "Stephon," a white male, put a gun to her face. He and a black male forced their way into her home. Both men were wearing hooded sweaters and masks that covered part of their faces. "Stephon" stated, "Miss, we're not here to hurt you." The victim did not see M.G. anywhere around and stated he did not come to her house the second time. "Stephon" pushed the victim in her bedroom and wanted her to go to the kitchen. The victim told "Stephon" that she was not going to her kitchen and laid down on her bed. "Stephon" then picked up the victim's purse from next to her bed and gave it to the black male. The victim attempted to pick up the telephone next to her bed, but "Stephon" told her she had better not put her hands on her phone. She then reached for a piece of pipe she kept next to her bed, and "Stephon" stated, "I think you better put it down." "Stephon" hit the victim in the face with his gun. He also hit her in the face with his hand. The black male took the victim's wallet from her purse and put it in the pocket of his hooded sweater. "Stephon" then threw the victim's purse onto the floor. The victim picked up her purse and put it back next to her. "Stephon" took the victim's purse again and exited her home. The victim's purse contained the money remaining from her social security check, her identification card, her social security card, her birth certificate, her food stamp card, her Medicaid card, and her medicine.

The victim ran to her door and told the men to bring back her purse. The black male told "Stephon" to shoot the victim. At trial the victim testified she "heard" the black male was D.W. D.W.'s grandmother was married to the victim's uncle. She also testified the police told her "it was [D.W.] and it was [M.G.] and it

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[2] In the transcript, the defendant's name is mistakenly spelled "Stephon" instead of "Stephen."

was Stephon[,]" and that "Stephon confessed that who they was." When asked if "Stephon" was in the courtroom, the victim stated, "I don't know. I couldn't say."

On cross-examination, the victim conceded she did not know the white male robber with the gun and referred to him as "Stephon" because "Sergeant Roscoe" had told her that name. She also indicated she did not know whether the black male who entered her home was D.W.

Mandeville Police Department Detective Fred Roshto also testified at trial. He interviewed the victim on October 11, 2004, and she informed him that "Marcus" had come to her house prior to the crime being committed.

Detective Roshto also interviewed the victim on October 13, 2004. The victim asked if "Marcus" had been arrested. Detective Roshto asked the victim about D.W. and Travel Watts, and she indicated they were her nephews. The victim indicated she did not think that either D.W. or Travel Watts were capable of committing the crime.

On October 20, 2004, Detective Roshto showed the victim State Exhibit #1, a six-person photo array containing the photograph of Dillon Archer, a person of interest, but not the photograph of the defendant. The victim indicated no one in the line-up looked familiar to her.

On November 4, Detective Roshto showed the victim State Exhibit #2, a six-person photo array containing the photograph of the defendant. The victim indicated the men who came into her home had their faces covered. Detective Roshto told the victim she could cover the faces in the line-up in the same way that the men had had their faces covered and see if she recognized anyone. The victim cupped her hand over the photographs and "lingered" on the defendant's photograph. The victim indicated that the person depicted in the photograph looked familiar, but she could not say for sure that it was the person who had committed the robbery.

On January 6, 2005, Detective Roshto again spoke to the victim. She indicated it was possible that D.W. could have been the black male robber.

On January 10, 2005, Detective Roshto obtained arrest warrants for M.G., D.W., and the defendant. M.G. and D.W. were arrested on January 11, 2005.

On January 12, 2005, Detective Roshto placed the defendant under arrest and advised him of his *Miranda* rights.[3] The defendant waived his rights and made a statement. Initially, he claimed he was at home with his girlfriend at the time of the incident. Detective Roshto told the defendant that he had evidence to the contrary, and the defendant asked Detective Roshto about the evidence. Detective Roshto refused to disclose the evidence and began to fill out booking paperwork on the defendant.

The defendant asked Detective Roshto why he was not playing "the game" with the defendant. Detective Roshto told the defendant that he was not there to play any games with the defendant, but to give the defendant a chance to tell his side of the story. The defendant replied that detectives liked to play mind games with people, and the defendant was waiting for Detective Roshto to play the mind games. Detective Roshto advised the defendant that Detective Roshto was not there to do that, but to give the defendant a chance to tell his side of the story, and the defendant had given his side of the story, which was that he was not there. The defendant then stated, "Well, I was there." The defendant indicated he acted as the lookout for the robbery and that M.G. and D.W. went into the victim's house. Detective Roshto testified that, according to the defendant, following the robbery, the defendant stated that he and M.G went back to M.G.'s house following the robbery and waited until things settled down. The defendant indicated he received a share of the proceeds of the robbery at M.G.'s house and then rode his bicycle

[3] Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed2 694 (1966).

home. M.G. lived approximately six blocks from the victim's house, and D.W. lived one block away from the victim.

On cross-examination, Detective Roshto indicated the defendant's exact statement concerning being a "lookout" was that he "waited on the street." Detective Roshto also indicated the defendant stated that only M.G. went into the victim's house.

ASSIGNMENTS OF ERROR

1. The evidence is insufficient to uphold the conviction.
2. The sentence imposed is excessive.

SUFFICIENCY OF THE EVIDENCE

In assignment of error number 1, the defendant argues the State failed to prove he was one of the perpetrators of the offense and failed to negate the reasonable probability that M.G. was the actual white male perpetrator of the robbery.

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, and 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.

All persons concerned in the commission of a crime, whether present or absent, and whether they directly commit the act constituting the offense, aid and abet in its commission, or directly or indirectly counsel or procure another to commit the crime, are principals. La. R.S. 14:24. However, the defendant's mere presence at the scene is not enough to "concern" him in the crime. Only those persons who knowingly participate in the planning or execution of a crime may be said to be "concerned" in its commission, thus making them liable as principals. A principal may be connected only to those crimes for which he has the requisite mental state. State v. Neal, 2000-0674, pp. 12-13 (La. 6/29/01), 796 So.2d 649, 659, cert. denied, 535 U.S. 940, 122 S.Ct. 1323, 152 L.Ed.2d 231 (2002).

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).

Any person who, having a specific intent to commit a crime, does or omits an act for the purpose of and tending directly toward the accomplishing of his object is guilty of an attempt to commit the offense intended; and it shall be immaterial whether, under the circumstances, he would have actually

accomplished his purpose. La. R.S. 14:27(A). Specific criminal intent is that state of mind which exists when the circumstances indicate that the offender actively desired the prescribed criminal consequences to follow his act or failure to act. La. R.S. 14:10(1). Though intent is a question of fact, it need not be proven as a fact. It may be inferred from the circumstances of the transaction. Specific intent may be proven by direct evidence, such as statements by a defendant, or by inference from circumstantial evidence, such as a defendant's actions or facts depicting the circumstances. Specific intent is an ultimate legal conclusion to be resolved by the fact finder. State v. Buchanon, 95-0625, p. 4 (La. App. 1st Cir. 5/10/96), 673 So.2d 663, 665, writ denied, 96-1411 (La. 12/6/96), 684 So.2d 923.

In this case, since the victim could not positively identify the defendant as one of the perpetrators and since there were no eyewitnesses who placed the defendant at or near the scene of the crime, there was little direct evidence against the defendant, other than the defendant's own statements. Therefore, the State sought to establish the defendant's identity as one of the perpetrators as well as his *mens rea* to commit the offense, by introducing the statement he made to Detective Roshto.

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).

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 a perpetrator of that offense. The jury was made well aware of the victim's inability to specifically identify the defendant as the masked white male robber who entered the victim's home and beat her with a pistol and his hand and then robbed her. In his statement

however, the defendant established he was at least a principal to the crime. Contrary to the defendant's assertions on appeal, he admitted to doing more than "standing on the street." He was not merely present. He participated in the execution of the offense. An innocent bystander would have had no reason to hide after the robbery until "things settled down." Nor would an innocent bystander have shared in the property taken from the victim. The guilty verdict indicates the jury reasonably rejected the defendant's far-fetched hypothesis of innocence and concluded he was a principal to the crime. In reviewing the evidence, we cannot say that the jury's determination is irrational under the facts and circumstances presented to them. See State v. Ordodi, 2006-0207, p. 14 (La. 11/29/06), 949 So.2d 654, 662. Further, the defendant also initially gave a false alibi to Detective Roshto. Purposeful misrepresentation reasonably raises the inference of a guilty mind. State v. Mitchell, 99-3342, p. 11 (La. 10/17/00), 772 So.2d 78, 85.

In regard to the defendant's claim that the State failed to negate the reasonable probability that M.G. was the actual white male perpetrator of the robbery, initially we note, under the law of principals, the State did not have to establish that the defendant was one of the robbers who entered the victim's home in order for him to be guilty as a principal to the offense. The state's burden under the law of principals was to show that the defendant knowingly participated in the planning and execution of the crime. Moreover, the victim specifically testified that M.G. did not come into her house a second time. This court will not assess the credibility of witnesses or reweigh the evidence to overturn a factfinder's determination of guilt. The trier of fact may accept or reject, in whole or in part, the testimony of any witness. State v. Lofton, 96-1429, p. 5 (La. App. 1st Cir. 3/27/97), 691 So.2d 1365, 1368, writ denied, 97-1124 (La. 10/17/97), 701 So.2d 1331.

This assignment of error is without merit.

EXCESSIVE SENTENCE

In counseled assignment of error number 2, the defendant argues, "a fifteen year sentence is excessive for a twenty-five-year-old first [time] felony offender."

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.

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 not more than forty years, without benefit of parole, probation, or suspension of sentence. La. R.S. 14:64.1(B). As pertinent here, La. R.S. 14:27 provides whoever attempts to commit any crime shall be fined or imprisoned or both, in the same manner as for the offense

attempted; such fine or imprisonment shall not to exceed one-half of the largest fine or one-half of the longest term of imprisonment prescribed for the offense so attempted, or both. La. R.S. 14:27(D)(3). The defendant was sentenced to fifteen years at hard labor without benefit of probation, parole, or suspension of sentence.

At sentencing, the trial court indicated the offense was basically a home invasion where the defendant and another person entered the victim's home armed with a firearm. The court noted the testimony at trial indicated the defendant struck the victim during the course of the home invasion while he and an accomplice robbed the victim in a very violent occurrence involving the use of a firearm. The court sentenced the defendant on the basis of the factors it had referenced and the Pre-Sentencing Investigation Report (PSI). The court found that "considering the heinousness of [the] crime," a sentence of anything less than the sentence imposed would deprecate the seriousness of the offense.

The PSI indicated the victim feared the defendant might try and kill her upon his release and no longer felt safe in her home. The PSI concluded that although the defendant was technically classified as a first time felony offender, he had a "distinctive pattern of violent criminal behavior against women, including multiple arrest convictions for [d]omestic [a]buse [b]attery, [s]imple [a]ssault and [s]imple [b]attery upon the mother of his two (2) children[.]"

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 the sentence. See La. C.Cr.P. art. 894.1(A)(3), (B)(6), (B)(10), (B)(19), & (B)(21).

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.

REVIEW FOR ERROR

The defendant asks that this court examine the record for error under La. C.Cr.P. art. 920(2). This court routinely reviews the record for such errors, whether or not such a request is made by a defendant. Under La. C.Cr.P. art. 920(2), we are limited in our review to errors discoverable by a mere inspection of the pleadings and proceedings without inspection of the evidence. After a careful review of the record in these proceedings, we have found no reversible errors. See State v. Allen, 94-1941, p. 11 (La. App. 1st Cir. 11/9/95), 664 So.2d 1264, 1273, writ denied, 95-2946 (La. 3/15/96), 669 So.2d 433.

CONVICTION AND SENTENCE AFFIRMED.