

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2010 KA 1241

STATE OF LOUISIANA

VERSUS

WILLIAM J. ROPER



Judgment Rendered: February 11, 2011

**Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Case No. 02-07-0591**

The Honorable Todd W. Hernandez, Judge Presiding

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BEFORE: CARTER, C.J., GAIDRY AND WELCH, JJ.

GAIDRY, J.

The defendant, William J. Roper, was charged by bill of information with first degree robbery, a violation of La. R.S. 14:64.1. He pleaded not guilty and was tried by a jury and unanimously convicted as charged. The state filed a multiple-offender bill of information seeking to have defendant adjudicated a habitual-felony offender and sentenced under La. R.S. 15:529.1.¹ Following a hearing, the trial court found defendant to be a second-felony habitual offender and sentenced him to imprisonment at hard labor for 40 years, without the benefit of probation, parole, or suspension of sentence. Defendant now appeals, raising the following assignments of error:

- (1) The evidence is insufficient to support the conviction.
- (2) The sentence imposed is constitutionally excessive.

We affirm the conviction, habitual offender adjudication, and sentence for the following reasons.

FACTS

On January 14, 2007, Tasha Harris was working at the Express One Stop service station on Joor Road in Baton Rouge, Louisiana, when an individual, subsequently identified as defendant, entered the store wearing a black hooded sweatshirt and blue jeans. Defendant wore the sweatshirt hood over his head and used his left hand to close the opening over his face, revealing only his eyes. Defendant approached Harris at the counter, pointed his right hand toward her, and demanded that she “give [him] the money.” Harris could not actually see defendant’s right hand because it was covered by the sleeve of his sweatshirt. According to Harris, the manner in which

¹ The habitual-offender bill of information states that “[o]n September 22, 1998, under case number D0031997CR004008 in the District Court, Arapahoe County, State of Colorado, the defendant, William J. Roper, was convicted of four counts of Aggravated Robbery – Simulated Weapon.”

defendant held and pointed his right hand towards her led her to believe that he was armed with a handgun. Fearful, Harris opened the register. Defendant then reached over and removed the cash from the register. At that point, defendant's hand became exposed and Harris realized that he did not actually have a gun. The defendant ran out of the store and towards a blue Dodge Ram truck. Harris observed defendant remove the hood from his head and immediately recognized him as an individual whom she routinely witnessed loitering outside the store.

Harris immediately contacted the police and provided a description of defendant and the vehicle. Shortly thereafter, Lieutenant Daniel Sonnier of the East Baton Rouge Parish Sheriff's Office observed a vehicle matching the description and initiated a traffic stop. Harris was then transported to the scene of the traffic stop where she immediately identified defendant as the individual who robbed her.

SUFFICIENCY OF THE EVIDENCE

In his first assignment of error, defendant argues that the evidence presented herein was insufficient to support the first degree robbery conviction. Defendant does not challenge his identity as the individual involved in the commission of the offense. Specifically, defendant contends that the evidence failed to prove that a reasonable person would have believed that he was armed, an essential element of the offense.

The standard for reviewing the sufficiency of evidence for a criminal conviction is set forth in *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). *See also* La. C.Cr.P. art. 821. Under *Jackson*, the standard for testing the sufficiency of evidence requires that a conviction be based on proof sufficient for any rational trier of fact, viewing the evidence in the light most favorable to the prosecution, to find the essential elements

of the crime beyond a reasonable doubt. *Jackson*, 443 U.S. at 319, 99 S.Ct. at 2789; *State v. James*, 02-2079, p. 3 (La. App. 1st Cir. 5/9/03), 849 So.2d 574, 579.

This standard of review, in particular the requirement that the evidence be viewed in the light most favorable to the prosecution, obliges the reviewing court to defer to the actual trier of fact's rational credibility calls, evidence weighing, and inference drawing. *See State v. Mussall*, 523 So.2d 1305, 1308-11 (La. 1988). Thus, the reviewing court is not permitted to decide whether it believes the witnesses or whether the conviction is contrary to the weight of the evidence. *See State v. Burge*, 515 So.2d 494, 505 (La. App. 1st Cir. 1987), *writ denied*, 532 So.2d 112 (La. 1988).

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). The first degree robbery statute has objective and subjective components. The state must prove that the offender induced a subjective belief in the victim that he was armed with a dangerous weapon and that the victim's belief was objectively reasonable under the circumstances. The statute thus excludes unreasonable panic reactions by the victim, but otherwise allows the victim's subjective beliefs to determine whether the offender has committed first degree robbery or the lesser offense of simple robbery in violation of La. R.S. 14:65. Direct testimony by the victim that he or she believed that the defendant was armed, or circumstantial inferences arising from the victim's immediate surrender of personal possessions in response to the defendant's threats, may support a conviction for first degree robbery. *State v. Gaines*, 633 So.2d 293, 300 (La. App. 1st Cir. 1993), *writ denied*,

93-3164 (La. 3/11/94), 634 So.2d 839, citing *State v. Fortune*, 608 So.2d 148, 149 (La. 1992) (*per curiam*).

At the trial in this case, the state introduced into evidence a videotape (without audio) of the offense. The videotape showed defendant approach the counter, extend his arm toward the area where Harris was apparently standing, reach over and grab something from the register, and then leave the store. Harris testified that although she did not see a gun, she initially believed that defendant held a weapon based upon defendant's forceful hand gesture. She admitted that her initial belief was dispelled when defendant's hand was exposed as he removed the money from the cash register. Harris's testimony was sufficient to show her subjective belief (although brief in duration) that defendant was armed with a dangerous weapon. *See State v. Gaines*, 633 So.2d at 300-01.

In summary, we find that the evidence presented at the trial in this case sufficiently established that defendant's actions induced a subjective belief in the victim that he was armed with a dangerous weapon and that the victim's belief was objectively reasonable under the circumstances. Considering Harris's testimony that she believed defendant had a weapon, that she feared he would use it, and that defendant took the money from the register in Harris's immediate control, we find there was ample evidence to convict defendant of first degree robbery. Contrary to defendant's assertions, the fact that Harris's belief was subsequently dispelled does not negate the fact that she initially was intimidated and fearful that defendant had a weapon. The evidence showed that Harris complied with defendant's demands and opened the cash register based on the belief that he was armed. It was not until defendant grabbed the money that Harris realized he was not armed. Thus, Harris's belief that defendant was armed was directly related

to the taking and was integral to completion of the crime. *See State v. Hamilton*, 93-1632, p. 3 (La. App. 4th Cir. 11/30/94), 646 So.2d 473, 474, *writ denied*, 94-3162 (La. 5/12/95), 654 So.2d 347. This assignment of error lacks merit.

EXCESSIVE SENTENCE

In his second assignment of error, defendant argues that the trial court erred in imposing an unconstitutionally excessive sentence. Specifically, he contends that the trial court failed to give adequate consideration to the mitigating factors. He asserts that the trial court should have considered in mitigation that he is 39 years old, that the present offense was only his second felony conviction, that no one was hurt during the commission of the offense, and that it is questionable whether the evidence was sufficient to support a conviction for first degree robbery.

Article I, Section 20 of the Louisiana Constitution prohibits the imposition of excessive punishment. A sentence is unconstitutionally excessive if it is grossly disproportionate to the severity of the offense or is nothing more than a purposeless and needless infliction of pain and suffering. *See State v. Dorthey*, 623 So.2d 1276, 1280 (La. 1993). A sentence is 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. Hogan*, 480 So.2d 288, 291 (La. 1985). 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. *State v. Sepulvado*, 367 So.2d 762, 767 (La. 1979); *State v. Lanieu*, 98-1260, p. 12 (La. App. 1st Cir. 4/1/99), 734 So.2d 89, 97, *writ denied*, 99-1259 (La. 10/8/99), 750 So.2d 962. However, a trial court is given wide discretion in the imposition of sentences within statutory limits, and the sentence imposed

by it should not be set aside as excessive in the absence of manifest abuse of discretion. *State v. Lobato*, 603 So.2d 739, 751 (La. 1992).

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. Herrin*, 562 So.2d 1, 11 (La. App. 1st Cir.), writ denied, 565 So.2d 942 (La. 1990). 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. Watkins*, 532 So.2d 1182, 1186 (La. App. 1st Cir. 1988). Remand for full compliance with Article 894.1 is unnecessary when a sufficient factual basis for the sentence is shown. *State v. Lanclos*, 419 So.2d 475, 478 (La. 1982).

First degree robbery carries a penalty of imprisonment at hard labor for not less than three nor more than 40 years, without benefit of parole, probation or suspension of sentence. La. R.S. 14:64.1(B). Defendant was also found to be a second-felony habitual offender under La. R.S. 15:529.1(A)(1)(a), which, during the time at issue, provided that:

If the second felony is such that upon a first conviction the offender would be punishable by imprisonment for any term less than his natural life, then the sentence to imprisonment shall be for a determinate term not less than one-half the longest term and not more than twice the longest term prescribed for a first conviction.²

Based on this provision, the sentencing range in this case was 20 years to 80 years at hard labor without benefit of parole, probation, or suspension of sentence. The trial court sentenced defendant to 40 years at hard labor

² This subsection of the statute was subsequently amended by Acts 2010, No. 911, § 1, effective July 6, 2010, as La. R.S. 15:529.1(A)(1), without substantive change in its language.

without benefit of parole, probation, or suspension of sentence, a mid-range sentence.

In sentencing defendant, the trial court indicated that it considered a presentence investigation report (PSI) that contained defendant's personal and criminal history. In support of the sentence imposed, the court observed that defendant was previously arrested on 14 counts of robbery of various liquor and convenience stores in the state of Colorado. He pleaded guilty to four counts and was sentenced to concurrent terms of imprisonment for 13 years. Defendant served eight years of his 13-year sentence and was on parole when the present offense was committed. The court specifically noted that defendant has not responded to past efforts at rehabilitation. Defendant committed the robbery at issue despite having previously been incarcerated for eight years on similar offenses. This, the trial court found, clearly showed defendant's propensity to continue criminal conduct.

We find no abuse of sentencing discretion in the sentence imposed. Although defendant was adjudicated a second-felony habitual offender, as the trial court noted, he has served time on at least four prior felony convictions. Furthermore, the fact that the defendant committed the robbery at issue while on parole for previous robberies demonstrates his complete lack of respect for the law. Therefore, considering defendant's demonstrated propensity to continue criminal activity and his inability or unwillingness to respond to past rehabilitation efforts, we conclude that the 40-year sentence imposed in this case is not excessive. The sentence is neither grossly disproportionate to the severity of the crime, nor so disproportionate as to shock our sense of justice. This assignment of error also lacks merit.

**CONVICTION, HABITUAL OFFENDER ADJUDICATION,
AND SENTENCE AFIRMED.**