NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	**COURT OF APPEAL**
VERSUS	**FIFTH CIRCUIT**
DONALD ALEXANDER, AKA DONALD PERRIER, AKA JASON PERRIER AKA MICEY	**STATE OF LOUISIANA**
	02-KA-178

APPEAL FROM
THE TWENTY-FOURTH JUDICIAL DISTRICT COURT,
PARISH OF JEFFERSON, STATE OF LOUISIANA,
NUMBER 01-2902, DIVISION "L,"
HONORABLE CHARLES V. CUSIMANO, PRESIDING.

JULY 30, 2002

WALTER J. ROTHSCHILD
JUDGE

Panel composed of Judges Edward A. Dufresne, Jr.
Sol Gothard and Walter J. Rothschild.

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Defendant-Appellant.

AFFIRMED; REMANDED WITH INSTRUCTIONS.

On May 31, 2001, the defendant, Donald Alexander, a/k/a Donald Perrier a/k/a Jason Perrier a/k/a Micey, was charged by bill of information with two counts of armed robbery.[1] Count 1 charged that the defendant committed armed robbery of Bobbi Adams on September 29, 2000, in violation of LSA-R.S. 14:64. Count 2 charged that the defendant committed armed robbery of Laurie Piot on January 8, 2001, in violation of LSA-R.S. 14:64. The defendant was arraigned and pled not guilty to these charges on June 1, 2001. On October 23 and 24, 2001, the case was tried before a 12-person jury, and the defendant was found guilty as charged on both counts. On November 13, 2001, the defendant was sentenced to imprisonment at hard labor for 62 years on each count, to be served concurrently, without benefit of parole, probation or suspension of sentence. The defendant filed a Motion to Reconsider Sentence on November 13, 2001, which was

[1]The bill of information also charged the defendant with one count of simple escape and one count of battery upon a police officer producing an injury requiring medical attention. However, the State later entered a nolle prosequi to these two charges, and they are not part of this appeal.

denied by the trial court. He also filed a Motion for Appeal, which was granted by the trial court on November 15, 2001.

FACTS

At trial, the State called Laurie Piot, a 24 year old nurse, who testified that on January 8, 2001, between 7:00 and 7:15 p.m., she parked her vehicle approximately five parking places from the front door of Cannon's Restaurant at the Oakwood Shopping Center. Ms. Piot exited her vehicle, locked the door, and walked toward the front doors of Cannon's Restaurant. A man, later identified as the defendant, was walking in the opposite direction toward her. When he got approximately four or five feet away from her, he demanded that she give him her purse and keys and that she get into the vehicle. Ms. Piot did not respond for a couple of seconds, and the defendant repeated his demands. Ms. Piot noticed that the defendant had a gun in his waistband. The defendant told Ms. Piot that he would shoot her if she did not give in to his demands. Ms. Piot gave him her purse and keys, but she refused to get into the vehicle. The defendant then waved his hand at her and told her to get the "f" away. Ms. Piot ran into Cannon's Restaurant and told the girl behind the counter that she had been robbed and that someone was stealing her vehicle. Ms. Piot testified that her vehicle was in fact stolen.

The police arrived at the restaurant approximately two or three minutes after being notified of the armed robbery. Ms. Piot told the police that the robber had a small, thin build and was approximately 5'7" to 5'8". She told them that he was wearing a dark windbreaker, dark pants, a dark knit cap and had a dark complexion. Ms. Piot testified that the defendant stole her purse, which contained a Nokia 252 cell phone, a checkbook, pager, a wallet with no cash, an inhaler for asthma, pens, and pencils. The police asked her to notify them if she became aware of any unauthorized use of her cell phone. Ms. Piot asked the phone company to print out the phone calls made from the date of the robbery, which they did. Ms. Piot gave that list to the police.

Sergeant Joseph Picone of the Jefferson Parish Sheriff's Office testified that he was the lead investigator of the robbery of Ms. Piot. Sergeant Picone testified that he learned that Ms. Piot's cell phone had been taken during the robbery. Ms. Piot forwarded to him a list of unauthorized calls that were made on the cell phone after the robbery. Sergeant Picone noticed there was a call made to a Terrytown address for approximately 21 minutes. He focused on that call because he thought that the person who received the call would remember to whom he or she was speaking on that date and time. Sergeant Picone learned that the Terrytown address was 600 Deerfield. He went to that location and spoke to Kristen Brown, who told him that she remembered the call and that she had been speaking to her boyfriend, Jessie Perrier. Following his conversation with Ms. Brown, Sergeant Picone went to the defendant's address, where Jessie and Donald Perrier also lived. He learned that Jessie Perrier and the defendant, Donald Alexander, were brothers. Sergeant Picone testified that he interviewed Jessie Perrier and obtained the Nokia cell phone that he used to call Ms. Brown. Prior to obtaining the phone, Sergeant Picone was given a consent to search by the owner of the residence and by Jessie Perrier.

During the course of their conversation, Jessie Perrier referred to the defendant by his nickname, "Micey." Sergeant Picone testified that the name "Micey" was developed during the course of a separate investigation of a robbery at Albertson's grocery store on September 29, 2000. After talking to Jessie Perrier, Sergeant Picone placed the defendant's photograph into a photographic lineup which he showed to Ms. Piot. Ms. Piot positively identified the defendant as the person who robbed her. She also identified the defendant in court as the man who robbed her.

Kristen Brown, who was called as a witness by the State, testified that she was 17-years old and attended O. Perry Walker High School. She stated that, on January 12, 2001, she received a call from her boyfriend, Jessie Perrier. She was at home when she received the call, and Jessie Perrier was at a dance at O. Perry Walker when he made the

call. Ms. Brown testified that Jessie Perrier had five brothers, including the defendant, who was nicknamed "Micey."

Bobbi Adams testified that she was 34-years old, married, and had four children, ages 2 to 15. She testified that, on September 29, 2000, at approximately 9:00 or 10:00 p.m., she was the victim of an armed robbery at Albertson's grocery store on Belle Chasse Highway in Jefferson Parish. Mrs. Adams testified that she was loading her daughter, Josephine, age 2, into the car seat in her mother's truck when a man, later identified as the defendant, came up to the truck. He said, "Give me your money." The man had a gun and was pointing it at her and her 2-year old child. He kept saying, "Give me your money." Mrs. Adams told him that she did not have any money. Then, she remembered that she had her checkbook, so she gave it to him and he left. Mrs. Adams testified that she had an ATM/debit card and her mother's credit card in the checkbook.

After the man robbed her, he ran to a car in which two other males were riding. He got into the car, and it sped away. Mrs. Adams went into Albertson's and a lady called the police. The police arrived less than five minutes later. Mrs. Adams later learned that her ATM/debit card had been used without her authorization after the time the robbery had been committed. She found out where and when the ATM/debit card had been used from her credit union, and she relayed this information to the police.

Jessica Adams, who is Bobbi Adams' 15-year old daughter, testified that she went with her mother to Albertson's on September 29, 2000. At the time the robbery occurred, Jessica was standing inside the open truck door on the passenger's side. Miss Adams stated that she saw the defendant point a gun at her mother and younger sister, demand money from her mother, and threaten to kill her younger sister. She was standing approximately seven feet away from the defendant during the robbery. Miss Adams testified that she had the opportunity to see the defendant's face, and that there was

nothing that obstructed her view of him. She stated that the lighting conditions were good.

Melodie Araibi, who was called as a witness by the State, identified the defendant in court as the individual that she knew as "Micey." She testified that she got an ATM/debit card from the defendant, and that approximately 30 minutes later, in the early morning hours of September 30, 2000, she used it at the Texaco Gas Station on Berhman Highway. The card was not in the defendant's name. Ms. Araibi testified that she did not know what she did with the card after she used it, but she did not have it when she talked to the police. She stated that the defendant gave her the card because he owed her some money.

Deputy William M. Jones testified that he was assigned to investigate the robbery involving Mrs. Adams that occurred on September 29, 2000. He learned that the robber had stolen Mrs. Adams' pocketbook containing a driver's license and an ATM/debit card. Mrs. Adams contacted Deputy Jones the day after the robbery and informed him that her ATM/debit card had been used at the Texaco Station on Berhman Highway several hours after the robbery had occurred. Deputy Jones interviewed the clerk at the Texaco Station and later determined that Melodie Araibi had used the card. He interviewed Ms. Araibi and asked her questions relating to how she had obtained the ATM/debit card. She gave him the nickname of "Micey." Deputy Jones later learned that "Micey" was the nickname used by the defendant. He showed Ms. Araibi a photographic lineup, and she identified the defendant as the man who gave her the ATM/debit card.

Deputy Jones met with Bobbi and Jessica Adams at their residence. He showed them the same photographic lineup that he showed to Ms. Araibi. Bobbi Adams could not make an identification; however, Jessica Adams identified the defendant as the robber. An arrest warrant was issued for the defendant, and the defendant was arrested. Deputy Jones interviewed him after informing him of his constitutional rights and after

the defendant indicated that he understood his rights. Deputy Jones obtained a taped statement from the defendant which was eventually transcribed. Copies of the transcript were shown to the jury, and the taped statement was played for the jury.

On the tape, the defendant denied giving the ATM/debit card to Ms. Araibi. The defendant acknowledged that he was present at the scene of the robbery of Mrs. Adams; however, he said that one of the guys that he was with actually robbed her. The defendant told Deputy Jones that he had gone into the store with the keys to the car while the other men committed the robbery. Deputy Jones testified that it is not typical for an individual to commit a robbery when the getaway driver is not in the car and has the only set of keys. The defendant later admitted that he drove away from Albertson's, received the credit cards, and that he, along with another individual, gave the credit cards to Ms. Araibi.

Deputy Jones also spoke with the defendant about the January 2001 robbery of Ms. Piot. The defendant gave an oral statement about that robbery as well; however, he refused to give a taped statement. The defendant told Deputy Jones that he knew something about a car that was taken at the mall. He said that he was not involved in that robbery, but he was present at the mall and knew the robbery was going to occur. He stated that he was the one who took the radio out of the truck that was stolen at the mall.

The State recalled Ms. Piot as a witness. She testified that there was a radio in her truck before the truck was stolen, but that there was no radio in the truck after the truck was recovered.

The defendant did not call any witnesses at trial, but defense counsel had the defendant approach the jury and show them his teeth.

LAW AND DISCUSSION

In his first assignment of error, the defendant argues that the trial court erred in admitting hearsay testimony. He contends that Kristen Brown was allowed to testify that

her boyfriend, Jessie Perrier, who is the defendant's brother, had gotten the stolen cell phone from Jessie's other brother, Ronald, who had gotten it from the defendant.

The testimony at issue is as follows:

PROSECUTOR:

Okay. Were you able to identify where the call was coming from?

MS. BROWN:

Yeah, the number on the uhm – on the uhm–

PROSECUTOR:

Was that number familiar to you?

MS. BROWN:

I just know it was a cell phone number.

PROSECUTOR:

Okay. Did that information give rise to you to ask Ronald –

MS. BROWN:

Yeah, where the phone was from.

PROSECUTOR:

Right.

MS. BROWN:

Yeah.

PROSECUTOR:

And did you ask?

MS. BROWN:

Mmhm (affirmative answer).

PROSECUTOR:

Okay. And what did you find out?

MS. BROWN:

I asked Jessie –

DEFENSE COUNSEL:

Judge, I'm going to –

PROSECUTOR:

Yes, ma'am?

DEFENSE COUNSEL:

Just one moment. No. I'm sorry. I'm going to withdraw the objection.

PROSECUTOR:

Okay. And then you asked – What did you find out?

MS. BROWN:

Jessie say that he got the phone from Tank.

PROSECUTOR:

Who is Tank?

MS. BROWN:

That's Ronald.

PROSECUTOR:

That's Ronald.

MS. BROWN:

Yeah.

PROSECUTOR:

Okay. And did you further ask where Tank got the phone?

MS. BROWN:

Yeah.

PROSECUTOR:

And what was the answer?

MS. BROWN:

Well, first he told me he got it from his brother.

DEFENSE COUNSEL:

Wait. I'm sorry. This sounds like double or triple hearsay and I'm going to make an objection at this point.

PROSECUTOR:

Can we approach?

The following discussion was held at the bench, outside the hearing of the jury.

PROSECUTOR:

No, no. It's not double or triple hearsay. She got in the portion of the hearsay she wanted to hear and now she wants the jury to take the comment out of context because the further explanation shows that he got the phone from him. It's the same level. All the information she's relating comes from the same person. We're not going back to additional sources. He's relating the chain of events. You know, she waived the objection to hearsay.

THE COURT:

What you're telling me is that she got the information from him so it's a statement against interest?

PROSECUTOR:

No. She got the information from his brother. She could have made a hearsay objection; she elected not to. Having done it –

THE COURT:

I'll sustain your objection to which you respectfully object.

In State v. Ditcharo, 98-1374 (La. App. 5 Cir. 7/27/99), 739 So.2d 957, writ denied, 99-2551 (La. 2/18/00), 754 So.2d 964, citing State v. Smith, 97-1075, pp. 6-7 (La. App. 5 Cir. 4/15/98), 710 So.2d 1187, 1190, this Court discussed hearsay as follows:

> Hearsay is a statement made out of court offered as evidence in court to prove the truth of the matter asserted by the statement. La. C.E. art. 801. La. C.E. art. 802 provides that "[h]earsay is not admissible except as otherwise provided by this Code or other legislation." Hearsay is excluded because the value of the statement rests on the credibility of the out-of-court

asserter who is not subject to cross-examination and other safeguards of reliability.

> This Court has held that evidence is not hearsay and is thus admissible if it is introduced to show that the utterance occurred or that the conversation took place rather than to show the truth of the matter asserted.
>
> Moreover, although a statement may constitute inadmissable hearsay, if the statement is merely cumulative or corroborative, the admission of such statement is harmless error. . . .

Louisiana Code of Criminal Procedure article 841(A) provides, in part, that "[a]n irregularity or error cannot be availed of after verdict unless it was objected to at the time of occurrence." The purpose behind the contemporaneous objection rule is to put the trial judge on notice of an alleged irregularity so that he may cure the problem and to prevent the defendant from gambling for a favorable verdict and then resorting to appeal on errors that might easily have been corrected by an objection. State v. Soler, 93-1042 (La. App. 5 Cir. 4/26/94), 636 So.2d 1069, 1074, writ denied, 94-1361 (La.11/4/94), 644 So.2d 1055.

The record reveals that the statements made by Ms. Brown at trial regarding from whom Jessie had gotten the cell phone were hearsay, because they were offered to prove the truth of the matter asserted, i.e., that Jessie had gotten the cell phone from Tank, also known as Ronald. However, the defendant withdrew his objection to that testimony and, therefore, that testimony is not at issue on appeal. When Ms. Brown was subsequently asked where Tank had gotten the phone, Ms. Brown testified, "Well, first he told me he got it from his brother." Defense counsel then lodged a hearsay objection, and the trial judge sustained the defendant's objection. Therefore, the trial judge did not admit hearsay testimony. Furthermore, the defendant was not prejudiced by the testimony that "he got it from his brother," because Ms. Brown had previously testified that Jessie had five brothers, including Ronald, Donald (the defendant), Jonus and Poody.

Contrary to the defendant's assertions, the trial court did not allow Ms. Brown to testify that Jessie had gotten the phone from Ronald who in turn had gotten it from the

defendant. The defendant's objection was sustained, so the witness never had the opportunity to clarify from whom Jessie or Tank had obtained the cell phone. We find that the trial judge was correct when he sustained the defendant's objection and that he did not admit hearsay testimony, as claimed by the defendant. Accordingly, this assignment of error is without merit.

In his second assignment of error, the defendant argues that his two 62-year sentences, to be served concurrently, were constitutionally excessive. He contends that the trial judge failed to articulate any reasons for the severe sentences, and in particular, he failed to comply with the provisions of LSA-C.Cr.P. art. 894.1. However, in his brief, the defendant fails to state any reasons why his sentences are constitutionally excessive.

The defendant filed a timely motion to reconsider sentence under LSA-C.Cr.P. art. 881.1, and he also made an oral objection at the time of sentencing. Therefore, this issue is properly before this Court on appeal. State v. Ewens, 98-1096 (La. App. 5 Cir. 3/30/99), 735 So.2d 89, 96, writ denied, 99-1218 (La. 10/08/99), 750 So.2d 179.

The Eighth Amendment to the United States Constitution and Article I, Section 20 of the Louisiana Constitution prohibit the imposition of excessive punishment. A sentence is considered excessive if it is grossly disproportionate to the offense or imposes needless and purposeless pain and suffering. State v. Munoz, 575 So.2d 848, 851 (La. App. 5 Cir.1991), writ denied, 577 So.2d 1009 (La. 1991). The trial judge has wide discretion in imposing sentences within the statutory limits, and sentences will not be set aside absent manifest abuse of that broad discretion. State v. Lanclos, 419 So.2d 475, 478 (La.1982); State v. Rainey, 98-436 (La. App. 5 Cir. 11/25/98), 722 So.2d 1097, 1106, writ denied, 98-3219 (La. 05/07/99), 741 So.2d 28. Three factors should be considered in reviewing a judge's sentencing discretion: (1) the nature of the crime; (2) the nature and background of the offender; and (3) the sentence imposed for similar crimes by the same court and other courts. State v. Le, 98-1274 (La. App. 6/30/99), 738 So.2d 168, 171, writ

denied, 00-2174 (La. 4/12/01), 789 So.2d 587; State v. Medious, 98-419 (La. App. 5 Cir. 11/25/98), 722 So.2d 1086, 1092, writ denied, 98-3201 (La. 04/23/99), 742 So.2d 876.

LSA-C.Cr.P. art. 894.1 is intended to provide an impartial set of guidelines to assist the trial judge when determining the nature and length of a sentence. State v. Price, 403 So. 2d 660 (La. 1981). The trial judge is not required to list every aggravating or mitigating circumstance so long as the record reflects that he adequately considered the guidelines of the article. State v. Smith, 433 So.2d 688 (La.1983); State v. Dunn, 30,767 (La. App. 2d Cir. 6/24/98), 715 So.2d 641, 643. 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 LSA-C.Cr.P. art. 894.1. State v. Lanclos, *supra* at 478.

In the instant case, the defendant was convicted of two counts of armed robbery, violations of LSA-R.S. 14:64. LSA-R.S. 14:64(B) provides that whoever commits the crime of armed robbery shall be imprisoned at hard labor for not less than ten years and for not more than 99 years, without benefit of parole, probation or suspension of sentence.

The defendant is correct when he asserts that the trial judge did not articulate any reasons prior to imposing sentence in accordance with LSA-C.Cr.P. art. 894.1. However, the record clearly shows an adequate factual basis for the sentence imposed. The defendant, while armed with a pistol, committed two crimes of violence on different dates and in different locations, and he threatened the lives of two adult victims and a 2-year-old child. He could have been sentenced up to a maximum of 198 years (two 99-year sentences for the two convictions to run consecutively); however, he was sentenced to two 62-year concurrent sentences.

A review of the jurisprudence indicates that similar sentences imposed upon defendants convicted of armed robbery have been upheld. In State v. Charles, 00-1586 (La. App. 5 Cir. 6/27/01), 790 So.2d 705, 711, the defendant was convicted of armed robbery and sentenced to 58 years at hard labor without benefit of parole, probation or

suspension of sentence. In Charles, defendant pulled a gun on a taxicab driver, pointed it at his head, and took his pager, watch and $54 from his pockets. Likewise, in State v. Wilson, 99-105 (La. App. 5 Cir. 7/27/99), 742 So.2d 957, 959, writ denied, 99-2583 (La. 2/11/00), 754 So.2d 935, the defendant was convicted of two counts of armed robbery and sentenced to two consecutive terms of 60 years of imprisonment at hard labor without benefit of parole, probation or suspension of sentence. In Wilson, the defendant committed armed robbery of two convenience stores with a gun. See State v. Wilson, 96-251 (La. App. 5 Cir. 10/1/96), 683 So.2d 775.

Similarly, in State v. Alexander, 98-993 (La. App. 5 Cir. 3/10/99), 734 So.2d 43, 47, writ denied, 99-2138 (La. 12/10/99), 751 So.2d 250, the defendant was convicted of five counts of armed robbery and sentenced to five consecutive terms of 50 years of imprisonment at hard labor without benefit of parole, probation or suspension of sentence. In Alexander, the defendant robbed several businesses while armed with a gun.

The two-62 year sentences imposed by the trial judge are within the statutory range and are supported by the record. There has been no showing that the defendant's sentences are grossly disproportionate to the severity of the offense committed or shocking to the sense of justice. Furthermore, the defendant has not articulated any reason why his sentences are excessive. Considering the record before us, we find that the trial court did not abuse its discretion in imposing these sentences and they are not constitutionally excessive. Accordingly, this assignment of error is without merit.

In his brief, the appellant requests, pursuant to La.C.Cr.P. art. 920, a review of the record for errors patent: any error discoverable by a mere inspection of the pleadings and proceedings and without inspection of the evidence. The record was reviewed for errors patent, according to LSA-C.Cr.P. art. 920; State v. Oliveaux, 312 So.2d 337 (La. 1975); State v. Weiland, 556 So.2d 175 (La. App. 5 Cir. 1990). The review reveals one patent error in this case.

The sentencing transcript reveals that the trial judge did not inform the defendant of the two-year prescriptive period for the filing of post-conviction relief at the time of sentencing, as provided by LSA-C.Cr.P. art. 930.8. Accordingly, we remand the matter to the trial court with orders to send written notice of this prescriptive period to the defendant within ten days of the rendition of this opinion and to file written proof in the record that the defendant received such notice. State v. George, 99-887 (La. App. 5 Cir. 1/4/00), 751 So.2d 973.

For the reasons set forth above, we affirm the defendant's conviction and sentence, and we remand to the trial court to inform the defendant of the prescriptive period for filing post-conviction relief.

AFFIRMED; REMANDED WITH INSTRUCTIONS.

Court of Appeal

FIFTH CIRCUIT
STATE OF LOUISIANA
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CERTIFICATE

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN MAILED OR DELIVERED THIS DAY JULY 30, 2002
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