NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2009 KA 1766

VGW

JGW

STATE OF LOUISIANA

VERSUS

ROBERT LATROY WHITE

Judgment Rendered: February 12, 2010

Appealed from the
Twenty-Second Judicial District Court
in and for the Parish of St. Tammany, State of Louisiana
Trial Court Number 434,333
Honorable William J. Crain, Judge Presiding

* * * * * * * * * *

Walter P. Reed **Covington, LA**	**Counsel for Appellee,** **State of Louisiana**
Kathryn W. Landry **Baton Rouge, LA**	
Raymond C. Burkart, III **Covington, LA**	**Counsel for Defendant/Appellant,** **Robert Latroy White**
Robert Latroy White **Angola, LA**	**Defendant/Appellant, pro se**

* * * * * * * * * *

BEFORE: WHIPPLE, HUGHES AND WELCH, JJ.

WHIPPLE, J.

The defendant, Robert Latroy White, was charged by bill of information with armed robbery, a violation of LSA-R.S. 14:64. The defendant entered a plea of not guilty. After a trial by jury, the defendant was found guilty as charged. The trial court denied the defendant's motion for post verdict judgment of acquittal, and the defendant was sentenced to fifty years imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence. After defendant was adjudicated a second-felony habitual offender, the trial court vacated the original sentence and imposed a sentence of one hundred years imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence. The trial court denied the defendant's motion to reconsider sentence. The defendant now appeals, raising the following counseled assignments of error:

1. The trial court committed legal error by failing to grant the defendant a new trial.

2. The trial court legally erred by not declaring a mistrial when the State's discovery conduct substantially affected the defendant's right to prepare a defense.

3. The evidence was insufficient beyond all reasonable doubt to convict the defendant of armed robbery; and the trial court erred and abused its discretion by not quashing the bill of information and by denying the defendant's post verdict judgment of acquittal motion.

4. The trial court committed gross prejudicial error and abused its discretion by denying the defendant's motions to continue, thereby denying the defendant's due process rights and denying his ability to prepare adequately his defense for trial.

5. The trial court committed gross prejudicial error and abused its discretion by denying the defendant's motions for mistrial, those motions based upon prejudicial statements by witnesses in the jury's presence.

6. The trial court erred and abused its discretion in giving the defendant an excessive sentence and by denying the defendant's motion for reconsideration of sentence.

The defendant raises the following pro se assignments of error, as set forth in his supplemental brief:

1. The trial court committed reversible and reviewable legal error by failing to grant the defendant's motion to quash defective indictment.

2. The trial court committed reversible and reviewable error by failing to grant the defendant's motion for post verdict judgment of acquittal.

For the following reasons, we affirm the conviction, habitual-offender adjudication, and sentence.

STATEMENT OF FACTS

On or about April 30, 2007, at approximately 2:15 p.m. in a Wal-Mart in Covington, Louisiana, the defendant was observed by Jason Pittman, the victim and security guard at Wal-Mart. Pittman began following the defendant after observing him remove security devices from items and place the items in his waistband. Pittman approached the defendant after he walked past the last cash register, and a physical altercation ensued. The defendant pulled a knife from his pocket and swiped at the victim, and the victim retreated. Pittman exited the store after the defendant and observed him enter a vehicle. Pittman provided the make and license plate number of the vehicle to the police.

COUNSELED ASSIGNMENT OF ERROR NUMBER ONE

In the first assignment of error, the defendant challenges the trial court's ruling on his motion for new trial. Specifically, the defendant contends that the State made an improper oral request for a special jury charge without furnishing the defendant a copy. The defendant further argues that the jury charge created prejudicial, confusing factual inferences and resulted in an unfair verdict. The defendant contends that in response to the jury's request for a definition of "immediate control," the trial court impermissibly instructed the jury on how to interpret evidence and expanded the "statutory, elemental structure" of LSA-R.S.

14:64 by instructing the jury with jurisprudence and creating a non-existent legal inference and definition of the word "armed." The defendant argues that the trial court's misinterpretation and application of the law created legal error.

During the traversal of the jury trial instructions, the defendant argued that armed robbery should be defined as set forth in the bill of information and objected to specific sections of the proposed jury instructions. The State agreed that the wording was not satisfactory and requested that the trial court instruct the jury consistent with jury instructions detailed in State v. Bridges, 444 So. 2d 721 (La. App. 5th Cir. 1984). The defendant objected to the use of the language from the above-cited case, but the trial court ruled that the language would be used.

The instructions given to the jury herein included the statutory definition of armed robbery as follows: "the taking of anything of value belonging to another from the person of another or which is in the immediate control of another by use of force or intimidation while the offender is armed with a dangerous weapon, to wit, a knife." See LSA-R.S. 14:64A. The trial court, however, in pertinent part, added the following:

> You need not find that the accused was armed at all times during the robbery to find him guilty of armed robbery. If the defendant armed himself to facilitate his completion of the robbery or to insure that he could get away without resistance from the victim, or that he became armed in the final step in a series of events to facilitate his escape or the completion of the crime, you may consider him to be armed for the purpose of this statute.

The defendant's subsequent motion for a new trial was based, in part, on the trial court's use of this language, which was cited by the court in Bridges, 444 So. 2d at 726, in addressing a sufficiency-of-the-evidence assignment of error.[1]

The trial court must charge the jury as to the law applicable to the case.

[1] In State v. Bridges, 444 So. 2d 721 (La. App. 5th Cir. 1984), the court found that the evidence established that the defendant armed himself with a dangerous weapon (by taking a pistol from a security guard during the robbery) to effectuate his escape. The court held that this was sufficient to establish the offense of armed robbery.

LSA-C.Cr.P. art. 802(1). Any jury instruction that relieves the State of its Fourteenth Amendment burden of proving every element of a criminal offense beyond a reasonable doubt is unconstitutional. State v. Smith, 2005-951, p. 16 (La. App. 5th Cir. 6/28/06), 934 So. 2d 269, 279, writ denied, 2006-2930 (La. 9/28/07), 964 So. 2d 357.

In Smith, the defendant contended he was prejudiced by the trial court's use of Black's Law Dictionary to define "aid and abet" and "procure," during additional jury instructions. On appeal, the appellate court found that the trial court's instructions did not suggest to the jury that the State did not have to prove every element of the offenses beyond a reasonable doubt. The appellate court further found that the trial court did not err in reading the jury the definition of "aid and abet" as written in Black's Law Dictionary, noting that definitions in that publication are based upon accepted jurisprudence, and that applicable case law is cited in the dictionary's individual entries. Smith, 2005-951 at pp. 15-16, 934 So. 2d at 279-280.

In the instant case, the defendant and the State objected to the original language in the jury instructions, and the State proposed the substitution at issue. We reject outright the notion that jurisprudential precepts cannot be used for guidance in the formulation of jury instructions. The Louisiana Civil Law Treatise abundantly cites jurisprudence in this regard; most notably Bridges is cited in the authors' Comments on armed robbery. See Cheney C. Joseph, Jr. and P. Raymond Lamonica, Criminal Jury Instructions § 10.64 in 17 Louisiana Civil Law Treatise (2003). We find that the trial court's use of language from accepted jurisprudence to define the "armed" element of armed robbery, considered in the context of the jury charge as a whole, did not serve to relieve the State from proving any element of the crime. This assignment of error lacks merit.

COUNSELED ASSIGNMENT OF ERROR NUMBER TWO

In the second counseled assignment of error, the defendant contends that the trial court erred in denying his motion for mistrial based on the admission and showing of a videotape to the jury. The defendant argues that the State purposely withheld inculpatory evidence from his view until the trial and that he was grossly prejudiced. The defendant contends that the State provided a videotape before the trial and then used an entirely different videotape during the trial. The defendant contends that his ability to present a defense was prejudiced.

A mistrial is a drastic remedy and should be declared only when the accused is unnecessarily prejudiced. State v. Smith, 430 So. 2d 31, 44 (La. 1983). Determination of whether a mistrial should be granted is within the sound discretion of the trial court, and the denial of a motion for mistrial will not be disturbed on appeal absent an abuse of that discretion. State v. Berry, 95-1610, p. 7 (La. App. 1st Cir. 11/8/96), 684 So. 2d 439, 449, writ denied, 97-0278 (La. 10/10/97), 703 So. 2d 603.

The State's failure to comply with discovery procedures will not automatically demand a reversal. State v. Burge, 486 So. 2d 855, 866 (La. App. 1st Cir.), writ denied, 493 So. 2d 1204 (La. 1986). Accordingly, a conviction should not be reversed because of an erroneous ruling on a discovery violation absent a showing of prejudice. State v. Gaudet, 93-1641, p. 6 (La. App. 1st Cir. 6/24/94), 638 So. 2d 1216, 1220, writ denied, 94-1926 (La. 12/16/94), 648 So. 2d 386.

The defendant cites the following pertinent colloquy:

MR. WHITE:
Your Honor, I haven't seen this part of the video prior to today and, therefore, I'm asking for a mistrial. This was not made available to me.

THE COURT:
You have a response?

MR. ALONZO: (prosecutor)

Yes. I think I showed him all the video. We might have speeded it up to show there was two minutes of nothingness in there, but I think this is the whole video.

(A DISCUSSION WAS HELD OFF THE RECORD.)

MR. WHITE:

The clip that was made available to us when we viewed was not this clip. It showed a different view, a different angle. It didn't show the side view of the store.

THE COURT:

Well, was it the same store?

MR. WHITE:

I wouldn't know, Your Honor.

MR. ALONZO:

Same everything.

MR. WHITE:

This was not made available as a part of discovery until now.

THE COURT:

Well --

MR. WHITE:

This is new evidence that's coming in.

THE COURT:

Just let me talk.

MR. WHITE:

Yes, Your Honor.

THE COURT:

Okay. This is a video. I don't know what was shown you; I was not there. But if you -- was this made available to him at any time yesterday?

MR. ALONZO:

Monday we showed it on Sue's computer.

THE COURT:

So it was shown on a smaller computer rather than on the wall; is that correct?

MR. ALONZO:

Correct.

THE COURT:

The Court is ruling that you have had the opportunity to see it. I do not think that is -- your question about it, a minute clip is not the basis for a mistrial.

I think the -- what they are showing here is just orienting people to the store. You are not part of that clip. You haven't been identified, I don't believe, as a participant yet; so I deny your motion.

At this point the standby defense counsel stated to the court that the defendant viewed a different clip on the previous day and did not have an opportunity to view the clip in question. The standby counsel added, "It was a clip that basically showed the direction of the camera pointing out towards U.S. 190.... He was unaware of this clip and that's the only clip he saw." The prosecutor stated that he could not remember the difference between the two clips and subsequently offered to show "the other clip." The trial court reiterated its previous ruling and the videotape was resumed.

The defendant has not identified nor does the record establish any significant difference between what he was shown before the trial and what was ultimately shown to the jury; nor has the defendant explained how that difference, if any, has prejudiced him. The trial court concluded that the defendant's objection to the video clip was either unfounded or was not sufficient to establish a basis for a mistrial. Based on the record before us, we are unable to say the trial court abused its discretion in so concluding and in accordingly denying the defendant's motion for mistrial. This assignment of error also lacks merit.

COUNSELED ASSIGNMENT OF ERROR NUMBER THREE AND PRO SE ASSIGNMENTS OF ERROR NUMBERS ONE AND TWO

Bill of Information

In the third counseled assignment of error, the defendant argues that the bill of information is fatally defective insofar as the bill alleges that the defendant took property from the person of or within the immediate control of Jason Pittman. The defendant contends that the victim, if any, was Wal-Mart and that a charge of aggravated or simple burglary, completed or attempted, as opposed to armed robbery, was the appropriate charge. The defendant further contends that any action taken against Pittman did not constitute armed robbery. In pro se assignment of error number one, the defendant submits additional argument regarding the validity of the bill of information. Specifically, the defendant notes that Pittman was merely an employee of Wal-Mart and argues that the bill of information is defective in that it does not allege the name of the owner of the property, in violation of LSA-C.Cr.P. art. 471.

Louisiana Code of Criminal Procedure article 464 provides as follows:

> The indictment shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged. It shall state for each count the official or customary citation of the statute which the defendant is alleged to have violated. Error in the citation or its omission shall not be ground for dismissal of the indictment or for reversal of a conviction if the error or omission did not mislead the defendant to his prejudice.

It is well settled that a defendant may not complain of the insufficiency of the indictment or bill of information after conviction if the offense charged has actually been identified and no prejudice has resulted from a lack of notice. See State v. Gainey, 376 So. 2d 1240, 1242-1243 (La. 1979).

As specifically noted in State v. James, 305 So. 2d 514, 516 (La. 1974):

> Armed robbery is a crime committed by violence against a person; thus, an essential element of the crime is that one or more [*individuals*] be the victim of the crime. Therefore, the naming of some building or corporation which suffered a loss by [*thef*]*t* is not sufficient to charge a robbery of it, since such building or institution could not be put in fear of bodily harm and could not be the victim of the crime of armed [*robbery*].

However, the bill of information herein identifies by name the victim herein, i.e., Pittman, an employee of the building or corporation that suffered a loss, Wal-Mart in this case. Thus, the accused has been fairly informed of the charge against him by the bill of information. The defendant has failed to show lack of notice or prejudice. We therefore find no merit in this argument.

Sufficiency of the Evidence

Challenging the sufficiency of the evidence, in counseled assignment of error number three, the defendant argues that the evidence did not show that Pittman was in immediate control of anything of value. The defendant further argues that there was no evidence that the defendant had the specific intent to commit an armed robbery or take anything. The defendant contends that Pittman used excessive force against him and he defended himself against an aggressor. Further, in the second pro se assignment of error, the defendant contends that Pittman never stated that anything was taken from his person or that anything was in his immediate control. The defendant further argues that Pittman's trial testimony was inconsistent with his pretrial statements.

In reviewing the sufficiency of the evidence to support a conviction, a Louisiana appellate court is controlled by the standard enunciated by the United States Supreme Court in Jackson v. Virginia, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789, 61 L. Ed. 2d 560 (1979). That standard of appellate review, adopted by the Legislature in enacting LSA-C.Cr.P. art. 821, is whether the evidence, when viewed in the light most favorable to the prosecution, was sufficient to convince a rational trier of fact that all of the elements of the crime had been proved beyond a reasonable doubt. State v. Brown, 2003-0897, p. 22 (La. 4/12/05), 907 So. 2d 1, 18, cert. denied, 547 U.S. 1022, 126 S. Ct. 1569, 164 L. Ed. 2d 305 (2006). When analyzing circumstantial evidence, LSA-R.S. 15:438 provides that the trier of fact must be satisfied that the overall evidence excludes every reasonable hypothesis of innocence. State v. Graham, 2002-1492, p. 5 (La. App. 1st Cir. 2/14/03), 845 So. 2d 416, 420. When a case involves circumstantial evidence and the trier of fact reasonably rejects a hypothesis of innocence presented by the defense, that hypothesis falls, and the defendant is guilty unless there is another hypothesis that raises a reasonable doubt. State v. Moten, 510 So. 2d 55, 61 (La. App. 1st Cir.), writ denied, 514 So. 2d 126 (La. 1987).

An appellate court is constitutionally precluded from acting as a "thirteenth juror" in assessing the weight to give evidence in criminal cases. See State v. Mitchell, 99-3342, p. 8 (La. 10/17/00), 772 So. 2d 78, 83. As the trier of fact, a jury is free to accept or reject, in whole or in part, the testimony of any witness. State v. Richardson, 459 So. 2d 31, 38 (La. App. 1st Cir. 1984). Moreover, where there is conflicting testimony about factual matters, the resolution of which depends upon a determination of the credibility of the witnesses, the matter is one of the weight of the evidence, not its sufficiency. Richardson, 459 So. 2d at 38. Thus, the fact that the record contains evidence that conflicts with the testimony accepted by a trier of fact does not render the evidence accepted by the trier of fact insufficient. State v. Azema, 633 So. 2d 723, 727 (La. App. 1st Cir. 1993), writ denied, 94-0141 (La. 4/29/94), 637 So. 2d 460; State v. Quinn, 479 So. 2d 592, 596 (La. App. 1st Cir. 1985). In this case, the defendant does not raise identity as an issue on appeal, but rather argues that the evidence does not establish the necessary elements to support the verdict.

In accordance with LSA-R.S. 14:64A, armed 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, while armed with a dangerous weapon. Armed robbery is a general intent crime. In general intent crimes, the criminal intent necessary to sustain a conviction is shown by the very doing of the acts that have been declared criminal. State v. Payne, 540 So. 2d 520, 523-524 (La. App. 1st Cir.), writ denied, 546 So. 2d 169 (La. 1989).

Pittman testified that he observed the defendant remove security devices from items in the electronics department of the store before placing the items in his waistband. The defendant pulled his shirt over his waistband and walked to the garden center. The defendant walked past the cash register and proceeded to the patio. According to Pittman, the defendant stated that he did not have anything when Pittman approached him and inquired about merchandise. Pittman attempted to physically detain the defendant before the defendant pulled a knife from his right-side pocket. The defendant told Pittman that he would cut him and successfully hit Pittman's hat twice with the knife as the defendant jabbed towards him.

After further examination, Pittman stated that he was able to briefly "get [his] hands" on the merchandise as he tussled with the defendant, who was retrieving his knife at the time. During cross-examination, Pittman identified the merchandise from which the defendant had removed security devices as ink-jet cartridges. The defendant then concealed the box with the cellophane-wrapped ink-jet cartridges in his waistband and repeated these actions with five or six additional boxes of ink-jet cartridges. Pittman stated that he did not recall referring to objects taken by the defendant as unknown merchandise during an interview with Detective Vitter. When asked whether the items in question were under his control at the time of the taking, Pittman confirmed that he was ten to fifteen feet away, but stated that given his employment responsibilities, the entire building was in his control. The defendant did not testify.

The Reporter's Comment for LSA-R.S. 14:64, referencing Act 50 of 1805, acknowledges that the Louisiana Legislature has adopted the common-law definition of robbery as it existed previous to that time. The common-law definition is aptly stated in the California Penal Code (1933) § 211 and it is from that source that this section was adopted, with very few changes. Regarding the phrase "from the person of another" the Reporter's Comment notes:

> The words "taking from the person * * * of another" as used in connection with the common law definition of robbery are not restricted in application to those cases in which the property taken is

> in actual contact with the person of the one from whom it is taken, but, if the property is away from the owner, yet under his control, for instance in another room of the house, it is nevertheless in his possession, and if he is deprived thereof, it may well be said it is taken from his possession. (Citation omitted.)

In this case, Pittman, the store security guard, was on duty at the time of the offense and was close enough in proximity to clearly observe the defendant's actions and confront the defendant before he could leave the area. The defendant took items of value belonging to another from the person of or in the immediate control of another. Further, the defendant used force and intimidation, while armed with a dangerous weapon, in completing the offense. After a thorough review of the record, we find that the evidence supports the jury's verdict. Viewing the evidence in the light most favorable to the State, any rational trier of fact could have found beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, that the defendant was guilty of armed robbery. This assignment of error is without merit.

COUNSELED ASSIGNMENT OF ERROR NUMBER FOUR

In the fourth assignment of error, the defendant argues that the trial court erred in denying his motion to continue on November 12, 2007, the day of the trial. The defendant contends that on that day, for the first time, he was allowed to view the photographic lineup, a video purporting to show the robbery, his audiotaped statement, and the victim's audiotaped statement, despite a previous discovery order. The defendant contends that the State misled the defense into concluding that the discovery order had been complied with by the State. The defendant contends that he was unable to prepare adequately for the trial and was denied his right to due process.

The trial court has great discretion in deciding whether to grant a continuance, and its ruling will not be overturned absent an abuse of discretion. State v. Champion, 412 So. 2d 1048, 1050-1051 (La. 1982); LSA-C.Cr.P. art. 712.

Generally, a conviction will not be reversed due to an improper ruling on a continuance unless there is a showing of specific prejudice to the defendant as a result of the denial of the continuance. State v. Strickland, 94-0025, p. 23 (La. 11/1/96), 683 So. 2d 218, 229; State v. Knighton, 436 So. 2d 1141, 1147 (La. 1983), cert denied, 465 U.S. 1051, 104 S. Ct. 1330, 79 L. Ed. 2d 725 (1984).

In denying the defendant's motion to continue, the trial court noted that the State had granted open-file discovery in this case. Further, the record does not establish that the defendant was lulled into a misapprehension of the strength of the State's case by any actions of the State. Further, the defendant has not presented proof of any prejudice suffered as a result of the trial court's denial of the motion to continue. Thus, this assignment of error lacks merit.

COUNSELED ASSIGNMENT OF ERROR NUMBER FIVE

In the fifth counseled assignment of error, the defendant contends that the trial court erred in denying his motion for mistrial based upon prejudicial statements by witnesses in the presence of the jury. Specifically, the defendant argues that a police detective acted improperly when he testified that he was familiar with the defendant's address. The defendant further notes that a second motion for mistrial was based on the State's witness alleging the defendant had prior criminal activity. The defendant contends that he was prejudiced and the trial court abused its discretion in denying his motion for a mistrial.

As provided in LSA-C.Cr.P. art. 771:

> In the following cases, upon the request of the defendant or the state, the court shall promptly admonish the jury to disregard a remark or comment made during the trial, or in argument within the hearing of the jury, when the remark is irrelevant or immaterial and of such a nature that it might create prejudice against the defendant, or the state, in the mind of the jury:
>
> (1) When the remark or comment is made by the judge, the district attorney, or a court official, and the remark is not within the scope of Article 770; or

(2) When the remark or comment is made by a witness or person other than the judge, district attorney, or a court official, regardless of whether the remark or comment is within the scope of Article 770.

Louisiana Code of Criminal Procedure article 775 provides that a mistrial shall be ordered when prejudicial conduct in or outside the courtroom makes it impossible for the defendant to obtain a fair trial. A mistrial under the provisions of Article 771 is at the discretion of the trial court and should be granted only where the prejudicial remarks of the witness or of the prosecutor make it impossible for the defendant to obtain a fair trial. See State v. Miles, 98-2396, p. 4 (La. App. 1st Cir. 6/25/99), 739 So. 2d 901, 904, writ denied, 99-2249 (La. 1/28/00), 753 So. 2d 231. As previously noted, a mistrial is a drastic remedy that should be granted only when the defendant suffers such substantial prejudice that he has been deprived of any reasonable expectation of a fair trial. Determination of whether a mistrial should be granted is within the sound discretion of the trial court, and the denial of a motion for mistrial will not be disturbed on appeal without abuse of that discretion. State v. Berry, 95-1610 at p. 7, 684 So. 2d at 449.

We agree with the trial court's denials of the defendant's requests for a mistrial. First, Detective Vitter did not testify about any crime committed by the defendant. Regarding the defendant's address, the detective simply stated that he was "very familiar with the address, being from over there. I worked over there." After the denial of the defendant's motion, the detective was allowed to continue and added that the address was within a complex of condominiums and that he knew the area, "just from working over there." He added that he knew the defendant's mother as a teacher.

The other motion for mistrial was based on statements elicited by the defendant during the cross-examination of Jason Pittman. The defendant inquired as to whether the store made a record of theft at the store. Pittman, in pertinent part, responded, "Yes ... I did go into our system and found where you had been caught --." At that point, the State objected to the line of questioning, and the defendant subsequently moved for a mistrial. The trial court admonished the jury to disregard the cited response by the witness.

Considering the record as a whole, we find that the defendant did not suffer substantial prejudice, nor was he deprived of any reasonable expectation of a fair trial. Accordingly, the trial court did not abuse its discretion in denying the defendant's requests for a mistrial. This assignment of error is also without merit.

COUNSELED ASSIGNMENT OF ERROR NUMBER SIX

In the final assignment of error, the defendant contends that the trial court erred in imposing an excessive sentence and in denying his motion for reconsideration of the sentence. The defendant contends that he was not a violent offender whose goal was to wreak havoc on society. He adds that he was an unfortunate substance abuser with learning disabilities.

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. State v. Hurst, 99-2868, pp. 10-11 (La. App. 1st Cir. 10/3/00), 797 So. 2d 75, 83, writ denied, 2000-3053 (La. 10/5/01), 798 So. 2d 962.

Whoever commits the crime of armed robbery shall be imprisoned at hard labor for not less than ten years and for not more than ninety-nine years, without benefit of parole, probation, or suspension of sentence. LSA-R.S. 14:64B. Any person who, after having been convicted within this state of a felony, thereafter commits any subsequent felony within this state, upon conviction of said felony, shall be punished as follows: "[i]f 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." LSA-R.S. 15:529.1A(1)(a). Upon his adjudication as a second-felony offender, the defendant was sentenced to one hundred years at hard labor without benefit of probation, parole, or suspension of sentence.

In sentencing defendant, the court noted it had received a pre-sentence investigation report (PSI). Prior to original sentencing, the State noted that the defendant had a pattern of committing robberies and thefts while armed with a knife and using that knife to facilitate his leaving the scene of the events. The trial court stated that it had reviewed LSA-C.Cr.P. art. 894.1 and the PSI and imposed the original sentence. The defendant withdrew his objection to the habitual offender bill of information and was immediately resentenced. Considering the defendant's history and the violent nature of the offense, we find that the sentence is not grossly disproportionate to the severity of the offense and, thus, is not unconstitutionally excessive.[2] This assignment of error lacks merit.

CONVICTION, HABITUAL-OFFENDER ADJUDICATION, AND SENTENCE AFFIRMED.

[2]We note that while the defendant cites a learning disability as a mitigating factor, the defendant represented himself during the trial and displayed significant intelligence and ability.