NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2018 KA 0439

STATE OF LOUISIANA

VERSUS

ALLEN ODELL WOODS

Judgment Rendered: DEC 21 2018

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Appealed from the
Nineteenth Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Docket Number 10-16-0312
Honorable Richard D. Anderson, Judge Presiding

* * * * * *

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* * * * * *

BEFORE: GUIDRY, THERIOT, AND PENZATO, JJ.

GUIDRY, J.

The defendant, Allen Odell Woods, was charged by amended bill of information with one count of home invasion (count I), a violation of La. R.S. 14:62.8, one count of intentional exposure to AIDS virus[1] (count II), a violation of La. R.S. 14:43.5, and two counts of second degree rape, violations of La. R.S. 14:42.1 (counts III and IV). He pled not guilty on all counts. After a jury trial, the defendant was found guilty as charged on all four counts. On count I, he was sentenced to twenty-five years at hard labor. On count II, he was sentenced to ten years at hard labor. On counts III and IV, for each count, he was sentenced to forty years at hard labor without the benefit of probation, parole, or suspension of sentence. The trial court ordered that the sentences on counts I, III, and IV would run concurrently with each other, but that the sentence on count II would run consecutively to the other sentences. The defendant now appeals, filing one counseled and six *pro se* assignments of error. For the following reasons, we affirm the convictions and sentences on all counts.

FACTS

In 2016, M.T.[2] retired from her job as a public school teacher after thirty years and began working part-time at a Baton Rouge alcohol and drug rehabilitation center. At the rehabilitation center, her duties included tutoring, checking in clients, and generally ensuring that their needs were met. M.T. became acquainted with the defendant, who was a patient there, although she did not interact socially with him. At one point, M.T. offered to give a young woman named Christine a ride around Baton Rouge to prevent Christine from being exposed to drug dealers while walking around the city. When M.T. picked up Christine, another individual with whom M.T. was friends from the rehabilitation

[1] This offense is now referred to as intentional exposure to HIV. See 2018 La. Acts, No. 427, § 1.

[2] We reference the victim by her initials only. See La. R.S. 46:1844(W).

center, Chris, was there, as well as the defendant, who was friends with Christine. M.T. allowed all three to ride in her car. On a break during the drive, M.T. went home and allowed Christine, Chris, and the defendant to smoke on her back patio.

Later, Christine gave the defendant M.T.'s cell phone number, which "aggravated" M.T., and he began communicating with her. He also stopped by her home several times without invitation from M.T. and on one occasion mowed her lawn without M.T. requesting him to do so. From his chart at the rehabilitation center, M.T. was aware that the defendant had HIV-Hepatitis C.

On August 22, 2016, at her home in East Baton Rouge Parish, M.T. prepared large, Thanksgiving-style dinners for her cousins, who were victims of the 2016 Baton Rouge flood, after she had worked from eight a.m. to five p.m. at the rehabilitation center. She put in a load of laundry in her laundry room, which was in her carport, and fell asleep on her sofa.

At 1:33 a.m. on the morning of August 23, 2016, M.T. awoke to find the defendant standing in front of her. She had left her door unlocked. When she asked him what he was doing there, he replied that he was there to "sex" her. M.T. immediately said no and told him, "We're not going to do that," and the defendant grabbed her arm and pulled her off the sofa. She repeatedly told him to stop and that "this was not consensual," remembering that his chart mentioned that he had HIV-Hepatitis C. The defendant then started beating M.T. in the face and threatened to kill her. He continued to drag M.T., first by the arm and later by the throat, onto a rug in her dining room, where he performed oral sex on her and attempted to insert his penis into her vagina. M.T. testified that his penis did make contact with her vagina, but that it did not enter because he did not have an erection, although DNA evidence later confirmed the presence of the defendant's sperm in M.T.'s vagina. At one point, he flipped M.T. over onto her knees, and she attempted to flee, but the defendant caught her by the throat and again beat her

face repeatedly. She gave up fighting him because she did not want to be beaten again.

After the defendant allowed M.T. to dress herself, she suggested that they go out onto her back patio to smoke. Eventually the defendant fell asleep, and M.T. went back into her home, locked the door, and called 911.

The defendant testified to the following in this case. He attended the rehabilitation center to recover from his addictions to cocaine and alcohol. While there, he became friends with Christine and met M.T. He never rode in M.T.'s car, and the car ride M.T. described must have occurred with somebody else. He added that he had been to M.T.'s house numerous times, and she always knew when he was coming over.

The defendant claimed that on August 22, 2016, M.T. invited him to her home, and he arrived around 9:00 p.m. He stated that they had consensual sex that evening and that he did not strike M.T. According to the defendant, they did argue, however, over bloody clothes and bloody rags that the defendant discovered in M.T.'s bathroom under her sink. The clothes were Christine's, but were covered in Chris's blood from a previous incident. The defendant claimed that in June of 2016, Chris had become intoxicated and that M.T. and Christine had brought him back to M.T.'s house, where they placed Chris in M.T.'s shower and where Chris's blood was smeared. According to the defendant, he cleaned up the bathroom and believed that M.T. would return the clothes to Christine and dispose of the rags. The defendant claimed that M.T. had initiated a sexual relationship with him out of fear over the incident with Chris and Christine.

The defendant further claimed that during this argument on either the evening of August 22, 2016, or the early morning hours of August 23, 2016, he threatened to tell the rehabilitation center about the incident and that M.T. had been

reading their private files, and also accused her of being a witch because she had retained the bloody clothes and rags.

SUFFICIENCY, PERJURY, AND "OTHER CRIMES" EVIDENCE

In his sixth *pro se* assignment of error, the defendant argues that the evidence was insufficient to support his conviction. In cases such as this one, where the defendant raises issues on appeal both as to the sufficiency of the evidence and as to one or more trial errors, the reviewing court should preliminarily determine the sufficiency of the evidence, before discussing the other issues raised on appeal. When the entirety of the evidence, both admissible and inadmissible, is sufficient to support the conviction, the accused is not entitled to an acquittal, and the reviewing court must review the assignments of error to determine whether the accused is entitled to a new trial. State v. Smith, 03-0917, pp. 3-4 (La. App. 1st Cir. 12/31/03), 868 So. 2d 794, 798; State v. Hearold, 603 So. 2d 731, 734 (La. 1992). Accordingly, we will first address the defendant's sixth *pro se* assignment of error, which challenges the sufficiency of the state's evidence.

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. State v. Wright, 98-0601, p. 2 (La. App. 1st Cir. 2/19/99), 730 So. 2d 485, 486, writs denied, 99-0802 (La. 10/29/99), 748 So. 2d 1157 & 00-0895 (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.

We note that the defendant claims that the testimony of "two state witnesses" contained "variances" such that the evidence was insufficient to convict him. It is unclear which two witnesses to whom the defendant is referring, but after a thorough review of the record, we find that the evidence supports the guilty verdicts.

We are convinced that 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 intentional exposure to HIV, home invasion, and two counts of second degree rape. The verdicts rendered in this case indicate the jury rejected the defendant's claim of consensual sex. When a case involves circumstantial evidence, and the jury reasonably rejects the hypothesis of innocence presented by the defendant's own testimony, that hypothesis falls, and the defendant is guilty unless there is another hypothesis that raises a reasonable doubt. State v. Captville, 448 So. 2d 676, 680 (La. 1984). No such hypothesis exists in the instant case. Additionally, the verdict indicates the jury rejected the defendant's testimony, accepted the testimony offered against him, and rejected his attempts to discredit that testimony. This court will not assess the credibility of witnesses or reweigh the evidence to overturn a fact finder's determination of guilt. The testimony of the victim alone is sufficient to prove the elements of the offense. The trier of fact

may accept or reject, in whole or in part, the testimony of any witness. Moreover, when 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. 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. Further, in reviewing the evidence, we cannot say that the jury's determination was irrational under the facts and circumstances presented to them. See State v. Ordodi, 06-0207, p. 14 (La. 11/29/06), 946 So. 2d 654, 662. An appellate court errs by substituting its appreciation of the evidence and credibility of witnesses for that of the fact finder and thereby overturning a verdict on the basis of an exculpatory hypothesis of innocence presented to, and rationally rejected by, the jury. State v. Calloway, 07-2306, pp. 1-2 (La. 1/21/09), 1 So. 3d 417, 418 (per curiam).

In his third *pro se* assignment of error, the defendant contends that "perjury" was used to convict him. First, he claims that the prosecutor knowingly allowed the victim to testify falsely that he had HIV. He claims that his medical records show otherwise. He also argues that the victim should not have seen his medical records at the rehabilitation center because she was not a case manager or a social worker, and therefore her statements that she knew he had HIV-Hepatitis C were "perjury."

The record discloses no contemporaneous objection raising claims of prosecutorial misconduct. An irregularity or error cannot be availed of after verdict unless it was objected to at the time of occurrence. See La. C.E. art. 103(A)(1); La. C.Cr.P. art. 841(A). Accordingly, the defendant has waived any error based on this allegation by his failure to enter a contemporaneous objection. State v. Morgan, 12-2060, p. 19 (La. App. 1st Cir. 6/7/13), 119 So. 3d 817, 830.

Additionally, a review of the record reveals that at trial, the prosecutor entered redacted medical records into evidence. These records clearly state that the defendant had HIV, viral hepatitis C, and "chronic type B viral hepatitis."

Next, the defendant lists a number of alleged inaccuracies regarding the victim's account of the events of August 23, 2016. He claims that the police's DNA swab and fingerprinting of the victim's door establishes that only the victim's DNA and fingerprints were on the door, which in turn suggests that she voluntarily opened the door for him. The record flatly contradicts these contentions. Officer Blanchard testified that he did not fingerprint anything in the victim's home, and the only items he swabbed for DNA were the handlebars, seat, and water bottle of the defendant's bicycle. The defendant also claims that cell phone records from the victim's phone establish that the victim called him to invite him to her home. The trial court, however, held that the state's production of the text messages between the victim and the defendant was sufficient, and a full cell "phone dump" was not needed.

The defendant points out that Angela Shaw Ellzey, a sexual assault nurse examiner who examined the victim, testified that she found no cuts, lacerations, vaginal injuries, bumps on her head, or bruising on the neck of the victim. He fails to mention, however, that Ms. Ellzey also testified that she observed the following injuries on the victim: bruising on her right eyelid and cheek consistent with the victim's account of the defendant beating her in the head; an abrasion on her left elbow; bruising on her left ring finger consistent with a defense mechanism of raising the hands and forearms; two bruises on her right lower leg consistent with someone pushing her legs apart; a bruise on her left lower knee area; and a bruise on her left foot. Additionally, the elbow bruising and the lower leg bruising were consistent with the victim's account of being flipped from her back into a prone position.

The defendant claims that the victim self-inflicted her black eye with an ankle sock full of coins to prevent him from disclosing the alleged incident with Chris and Christine when the victim supposedly brought Chris back to her home after he was intoxicated, which would have been a violation of the rehabilitation center's rules regarding interactions between workers and patients.

To the extent the defendant claims that the testimony was "perjury," the jury's decision to accept the testimony of the victim rather than that of the defendant is a matter regarding her credibility, which this court will not overturn. See State v. Thompson, 13-1805, p. 5 (La. App. 1st Cir. 5/2/14), 2014 WL 1778366 (unpublished), writ denied, 14-1336 (La. 4/2/15), 163 So. 3d 790.

Finally, the defendant claims that the victim offered conflicting testimony regarding how the defendant knew where she lived. He highlights the fact that in her 911 call, she told the operator that the defendant must have somehow found out where she lived and followed her home, which conflicted with her earlier testimony that the defendant knew where she lived because he had been on her back patio with Chris and Christine. Although the defendant correctly points out that the victim stated, "You're right, I did not tell her the truth there. I don't know why[,]" he omits the discussion precipitating the statement. The victim made this remark during the following exchange on cross examination after the audio of the 911 call was played for her:

> Q. [Defense counsel]: What you told the 911 operator was that he followed you home; correct?
> A. [Victim]: I don't know why I said that.
> Q: You also told the operator that somehow he found out where you lived; is that correct?
> A: I don't know why I said that.
> Q: You also told the operator that you were a case manager at detox; is that correct?
> A: That's what I had been doing the last couple of weeks that I was there. I just had somebody hold me up by the throat and beat me in the head, and I went inside and used the phone.
> Q: We will get to that.
> A: I'm sorry --

Q. We will get to that.
A: -- if I didn't get my facts straight.
Q: Okay. So those are facts --
A: You're right, I did not tell her the truth there. I don't know why.
Q: Did you want the operator to believe that he was just a stranger who had come and assaulted you?
A: I don't know what I wanted. I just -- I don't even remember making -- I didn't even remember making the call.
Q: But you know that those -- the words you stated on there are not the truth?
A: I recognize that now.

* * *

Q. Okay. Now, you do realize that we have two different scenarios going on right now. In court today you have testified differently than what you said on the 911 call.
A: Yes.
Q: Okay. But you're saying that your testimony today is the truth?
A: That's right.

The defendant claims that the prosecutor was aware of this alleged "perjury" before the trial began and deliberately used this "false evidence or testimony" to convict him. He claims that he is therefore entitled to a new trial.

It cannot be presumed that a prosecutor has knowledge that a witness's answers are false simply because the witness may have made conflicting statements on a prior occasion. A defendant shows no error or entitlement to a new trial on this basis when the defendant fails to show that the statements at issue are actually false or that the prosecution knew they were false and acted in collusion with a witness to facilitate false testimony. Morgan, 12-2060 at 20, 119 So. 3d at 830.

In this case, the defendant has not shown the victim's statement was false. The victim explained her previous statement to the 911 operator was made immediately after the defendant had beaten and raped her, she did not even remember making the call, and her testimony at trial was accurate. The fact that the victim made a previous conflicting statement after experiencing severe trauma

does not show that the prosecutor knew her statements were false. Therefore, the defendant has shown no error or an entitlement to a new trial.

The defendant also argues that the prosecutor violated La. C.E. art. 404(B) by failing to file a motion before trial because the prosecutor mentioned the defendant's April 25, 2013 misdemeanor conviction during cross-examination.

In the instant case, the only time the defendant's prior conviction was mentioned was during cross-examination. In a criminal case, every witness by testifying subjects himself to examination relative to his criminal convictions. La. C.E. art. 609.1(A) & (B); see State v. Lafleur, 16-467, p. 21 (La. App. 3d Cir. 1/4/17), 209 So. 3d 927, 940-41, writ denied, 17-0808 (La. 1/29/18), 235 So. 3d 1104.

We find *pro se* assignment of error number three to be without merit.

FAILURE TO DISCLOSE EXCULPATORY MATERIAL

In his first *pro se* assignment of error, the defendant alleges that the state violated Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), by withholding exculpatory evidence at trial. A review of the pages referenced by the defendant indicates that he refers to evidence regarding cell phone record data, medical records, fingerprints, and other "tangible materials." The "tangible materials" seem to be the following items: a sock; "clothing with rags covered with blood;" and the rug on which the defendant claims that he and the victim repeatedly had sex. The record reflects that no Brady objection was made regarding these items; further, no reference is made to any exculpatory evidence on the pages the defendant cites.

The suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution. Brady, 373 U.S. at 87, 83 S.Ct. at 1196-97. Favorable evidence includes both exculpatory

evidence and evidence impeaching the testimony of a witness when the reliability or credibility of that witness may be determinative of the defendant's guilt or innocence, or when it may have a direct bearing on the sentencing determination of the jury. United States v. Bagley, 473 U.S. 667, 676, 105 S.Ct. 3375, 3380, 87 L.Ed.2d 481 (1985); Giglio v. United States, 405 U.S. 150, 154, 92 S.Ct. 763, 766, 31 L.Ed.2d 104 (1972). Regardless of request, favorable evidence is material, and constitutional error results from its suppression by the government, "if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Kyles v. Whitley, 514 U.S. 419, 433-34, 115 S.Ct. 1555, 1565, 131 L.Ed.2d 490 (1995) (citing Bagley, 473 U.S. at 682, 105 S.Ct. at 3383). Bagley's touchstone of materiality is a "reasonable probability" of a different result, and the adjective is important. The question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence. A "reasonable probability" of a different result is accordingly shown when the government's evidentiary suppression "undermines confidence in the outcome of the trial." Kyles, 514 U.S. at 434, 115 S.Ct. at 1566; Bagley, 473 U.S. at 678, 105 S.Ct. at 3381; State v. Verret, 06-1337, pp. 21-22 (La. App. 1 Cir. 3/23/07), 960 So. 2d 208, 222.

First, regarding the cell phone record data, the state produced a copy of a phone record report in an amending and supplemental discovery answer on June 28, 2017, in response to the defendant's discovery request. The report includes a calendar and text messages from the victim's phone, including text messages to and from the defendant. On August 17, 2017, the defendant filed a supplemental discovery request demanding a "full and accurate report, commonly known as a dump, collected from the victim's [p]hone." On September 6, 2017, at a hearing on the supplemental discovery request, the state noted that it had provided the

communication between the defendant and the victim on the phone, and the trial court replied, "I believe that is sufficient." On September 18, 2017, the state filed an answer stating that evidence intended for use at trial that was collected and not attached or provided to the defendant, as previously indicated, was available for inspection upon an appointment. The record reveals that no objection was made at trial regarding the entirety of the information on the victim's cell phone, and further, there is no indication that anything exculpatory was contained on the cell phone.

Second, regarding the medical records, on August 17, 2017, the defendant filed a motion for a subpoena duces tecum, but the trial court denied this motion on August 21, 2017. Additionally, the prosecutor noted at trial that she was introducing only a redacted version of the defendant's medical records because "it contains information of previous arrests and things like that."

Third, regarding the fingerprints, the officer who processed the scene, Robert Blanchard, testified that he did not fingerprint anything in the victim's home.

Finally, regarding the other tangible materials, the state did introduce into evidence the sock that the defendant references, but no Brady objection was made. During his testimony, Officer Blanchard did not mention the bloody clothes and rags the defendant references, nor did the state enter anything resembling them into evidence. Additionally, Officer Blanchard indicated that he collected the rug when he processed the scene, but the minute entry indicates that the rug was not introduced into evidence.

We find no merit in this assignment of error.

INEFFECTIVE ASSISTANCE OF COUNSEL

In his second *pro se* assignment of error, the defendant complains he was deprived of his right to compulsory process for obtaining witnesses; specifically,

he argues that trial counsel rendered ineffective assistance in not seeking the following possible witnesses for trial: Chris and Christine, two individuals from the rehabilitation center; the victim's neighbor; and an addiction counselor named "Mr. Smitty." He stated that his attorney told him that he could not locate Chris and Christine because the rehabilitation center did not keep their contact information, but argues that his attorney should have tried to locate them. The defendant added that his attorney told Mr. Smitty that his testimony was not necessary at trial, and he did not attempt to interview the victim's neighbor or contact the neighbor. A claim of ineffective assistance of counsel is generally relegated to post-conviction proceedings, unless the record permits definitive resolution on appeal. State v. Miller, 99-0192, p. 24 (La. 9/6/00), 776 So. 2d 396, 411, cert. denied, 531 U.S. 1194, 121 S.Ct. 1196, 149 L.Ed.2d 111 (2001).

A claim of ineffectiveness of counsel is analyzed under the two-pronged test developed by the United States Supreme Court in Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). To establish that his trial attorney was ineffective, the defendant must first show that the attorney's performance was deficient, which requires a showing that counsel made errors so serious that he was not functioning as counsel guaranteed by the Sixth Amendment. Second, the defendant must prove that the deficient performance prejudiced the defense. This element requires a showing that the errors were so serious that the defendant was deprived of a fair trial; the defendant must prove actual prejudice before relief will be granted. It is not sufficient for defendant to show that the error had some conceivable effect on the outcome of the proceeding. Rather, he must show that but for the counsel's unprofessional errors, there is a reasonable probability the outcome of the trial would have been different. Further, it is unnecessary to address the issues of both counsel's performance and prejudice to the defendant if the defendant makes an inadequate showing on one of the

components. State v. Serigny, 610 So. 2d 857, 859-60 (La. App. 1st Cir. 1992), writ denied, 614 So. 2d 1263 (La. 1993). Trial counsel's decisions regarding which witnesses to subpoena for trial were matters of trial strategy. The investigation of strategy decisions requires an evidentiary hearing[3] and, therefore, cannot possibly be reviewed on appeal. State v. Allen, 94-1941, p. 8 (La. App. 1st Cir. 11/9/95), 664 So. 2d 1264, 1271, writ denied, 95-2946 (La. 3/15/96), 669 So. 2d 433. Further, under our adversary system, once a defendant has the assistance of counsel, the vast array of trial decisions, strategic and tactical, that must be made before and during trial rests with an accused and his attorney. The fact that a particular strategy is unsuccessful does not establish ineffective assistance of counsel. State v. Folse, 623 So. 2d 59, 71 (La. App. 1st Cir. 1993).

We find *pro se* assignment of error number two to be without merit.

DEFECTIVE INDICTMENT

In his fourth *pro se* assignment of error, the defendant claims that the indictment was defective. With regard to the rape charges, he claims that the encounter was consensual and that he and the victim had an ongoing sexual relationship. With regard to the home invasion charge, he claims that the victim invited him to her home and opened the door for him. He argues that "'essential facts or elements' constituting the offense(s), [sic] did not exist" and did not appear in the charges in the indictment.

We note the record reveals that no motion to quash was filed in this case, and this argument is raised for the first time on appeal. A new ground for a motion to quash cannot be raised on appeal. State v. Pelas, 99-0150, p. 3 (La. App. 1st Cir. 11/5/99), 745 So. 2d 1215, 1217. Moreover, the question of factual guilt or innocence of the offense charged is not raised by the motion to quash. State v.

[3] The defendant would have to satisfy the requirements of La. C.Cr.P. art. 924, et seq., to receive such a hearing.

Beauchamp, 510 So. 2d 22, 25 (La. App. 1st Cir.), writ denied, 512 So. 2d 1176 (La. 1987). Accordingly, the argument is not properly before this court and will not be considered.

We find this assignment of error to be without merit.

EXCESSIVE SENTENCES

In his fifth *pro se* and only counseled assignment of error, the defendant contends that the total sentence of fifty years, as applied to him at sixty years old, is unconstitutionally excessive. He argues that this court should consider the sentence in light of his age and that his criminal history is likely attributable to his substance abuse and mental health issues.

The Eighth Amendment to the United States Constitution and Article I, Section 20 of the Louisiana Constitution prohibit the imposition of cruel or 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, 00-3053 (La. 10/5/01), 798 So. 2d 962.

Louisiana Code of Criminal Procedure article 894.1 sets forth the factors for the trial court to consider when imposing sentence. Although the entire checklist of La. C.Cr.P. art. 894.1 need not be recited, the record must reflect the trial court

adequately considered the criteria. State v. Brown, 02-2231, p. 4 (La. App. 1st Cir. 5/9/03), 849 So. 2d 566, 569.

The articulation of the factual basis for a sentence is the goal of La. C.Cr.P. art. 894.1, not rigid or mechanical compliance with its provisions. 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 La. C.Cr.P. art. 894.1. State v. Lanclos, 419 So. 2d 475, 478 (La. 1982). The trial judge should review the defendant's personal history, his prior criminal record, the seriousness of the offense, the likelihood that he will commit another crime, and his potential for rehabilitation through correctional services other than confinement. See State v. Jones, 398 So. 2d 1049, 1051-52 (La. 1981). On appellate review of a sentence, the relevant question is whether the trial court abused its broad sentencing discretion, not whether another sentence might have been more appropriate. State v. Thomas, 98-1144, p. 50 (La. 10/9/98), 719 So. 2d 49, 50 (per curiam).

If the defendant is convicted of two or more offenses based on the same act or transaction, or constituting parts of a common scheme or plan, the terms of imprisonment shall be served concurrently unless the court expressly directs that some or all be served consecutively. La. C.Cr.P. art. 883. Thus, La. C.Cr.P. art. 883 specifically excludes from its scope sentences that the court expressly directs to be served consecutively. Furthermore, although the imposition of consecutive sentences requires particular justification when the crimes arise from a single course of conduct, consecutive sentences are not necessarily excessive. State v. Palmer, 97-0174, pp. 5-6 (La. App. 1st Cir. 12/29/97), 706 So. 2d 156, 160.

As applicable here, whoever commits the crime of home invasion shall be fined not more than five thousand dollars and shall be imprisoned at hard labor for not more than twenty-five years. La. R.S. 14:62.8(B)(1) (prior to amendment by 2017 La. Acts, No. 281, § 1). On count I of home invasion, he was sentenced to

twenty-five years at hard labor.

As applicable here, whoever commits the crime of intentional exposure to HIV shall be fined not more than five thousand dollars, imprisoned with or without hard labor for not more than ten years, or both. La. R.S. 14:43.5(E)(1). On count II of intentional exposure to the AIDS virus, the defendant was sentenced to ten years at hard labor.

Whoever commits the crime of second degree rape shall be imprisoned at hard labor for not less than five nor more than forty years. At least two years of the sentence imposed shall be without benefit of probation, parole, or suspension of sentence. La. R.S. 14:42.1(B). On counts III and IV of second-degree rape, he was sentenced on each count to forty years at hard labor without the benefit of probation, parole, or suspension of sentence. The trial court ordered that the sentences on counts I, III, and IV would run concurrently with each other, but that the sentence on count II would run consecutively to the other sentences.

Therefore, the defendant received the maximum sentences allowed under the law for all four counts. As a general rule, maximum sentences are to be reserved for the worst offenders and the worst offenses, or when the offender poses an unusual risk to the public safety due to his past conduct of repeated criminality. State v. Miller, 96-2040, p. 4 (La. App. 1st Cir. 11/7/97), 703 So. 2d 698, 701, writ denied, 98-0039 (La. 5/15/98), 719 So. 2d 459.

Before sentencing, the trial court ordered a presentence investigation ("PSI") and referred to it extensively during sentencing. The trial court noted that the Department of Corrections, Division of Probation and Parole, recommended that the defendant be sentenced to the maximum amount on all counts and that the sentences be consecutively served. Additionally, the trial court reviewed the defendant's extensive criminal history, including his prior convictions for disturbing the peace, aggravated assault, burglary, resisting an officer, hit and run,

multiple counts of DWI, multiple counts of misdemeanor theft, multiple counts of simple burglary, and multiple counts of simple battery. He was also arrested and charged with aggravated burglary and attempted aggravated rape, but the state no billed the charges because it was unable to locate the victim. The trial court stated the following:

> The court has for its consideration a 60-year-old fifth felony offender. He has a violent criminal history spanning more than 45 years. The defendant is a habitual offender showing a pattern of burglarizing homes and terrorizing women in the community. The defendant also has numerous substance abuse related offenses the state has either dismissed or allowed the defendant to plead down. The Office of Probation and Parole feels the defendant is a danger to women, public safety, and the community as a whole. For those reasons, they recommend the defendant receive the maximum sentence on each count and to serve those consecutively. The court agrees that he is a danger. The court agrees that the defendant belongs in jail.

Thus, the trial court specifically found that the defendant is a danger to society because of his violent criminal history. The trial court also took note of the victim's letter to the court in which she detailed the physical and mental harm that the defendant inflicted upon her and described the humiliation and fear in which she has lived since the attack, her inability to work, and her mental and spiritual wounds.

A thorough review of the record reveals that the trial court adequately considered the criteria of La. C.Cr.P. art. 894.1 and did not manifestly abuse its discretion in imposing the sentences herein. See La. C.Cr.P. art. 894.1(A)(2), (B)(1), & (B)(6); cf. State v. Mosby, 14-2704 (La. 11/20/15), 180 So. 3d 1274 (per curiam) (imposition of thirty-year term of imprisonment on a non-violent seventy-two-year-old female defendant with severe infirmities who was convicted of distribution of cocaine and adjudicated a fourth-felony habitual offender unconstitutionally excessive). Additionally, given the particular circumstances of this case, including the defendant's background and the physical and mental

trauma he inflicted upon the victim, the record provides ample justification for the sentences that the trial court imposed. We find that the trial court reasonably considered the defendant one of the worst offenders and the instant crime one of the worst offenses of its kind because the defendant violated the victim's home and body, terrorized her, and as a fifth-felony offender with a violent criminal history spanning more than forty-five years, poses an unusual threat to public safety. Therefore, the sentences imposed on all counts were not grossly disproportionate to the severity of the offenses or shocking to the sense of conscience, and were not constitutionally excessive.

This assignment of error is without merit.

CONVICTIONS AND SENTENCES AFFIRMED.