

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA \* NO. 2001-KA-0834  
VERSUS \* COURT OF APPEAL  
HOWARD LAMPTON \* FOURTH CIRCUIT  
\* STATE OF LOUISIANA  
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APPEAL FROM  
CRIMINAL DISTRICT COURT ORLEANS PARISH  
NO. 410-778, SECTION "B"  
Honorable Patrick G. Quinlan, Judge

\* \* \* \* \*  
**Chief Judge William H. Byrnes, III**

\* \* \* \* \*

(Court composed of Chief Judge William H. Byrnes, III, Judge Miriam G. Waltzer, and Judge Dennis R. Bagneris, Sr.)

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**AFFIRMED**

Howard Lampton appeals his conviction and sentence for manslaughter for which he received thirty years at hard labor. We affirm.

Statement of the Case

On November 18, 1999, Lampton was charged with second degree murder. After a hearing on March 14, 2000, the trial court denied the motion to suppress the identification, the statement, and the evidence. The motion to suppress the identification as to one additional witness was left open to the day of trial. On the morning of trial on October 16, 2000, the State declared that it would not introduce any evidence relating to the identification by the one witness, who did not testify at the motion hearing. After the jury found the defendant guilty of manslaughter, on October 24, 2000, Lampton was sentenced to thirty years at hard labor with credit for time served. The trial court denied the defense motion to reconsider sentence, and Lampton's appeal followed.

Statement of the Case

At trial Sharon Ryals, the victim's mother, testified that the victim,

Gregory Parker, was thirty-two years old and had undergone a hip replacement weeks before his death. He could walk with the aid of a cane, and he could not run. She identified a photograph of her son.

Dr. Michael DeFatta, a forensic pathologist for the Orleans Parish Coroner's Office, testified that he supervised the autopsy of Gregory Parker conducted by Dr. Michael Cramer. He identified the autopsy report, which bore his signature. Dr. DeFatta stated that the victim suffered: an inch deep laceration at the back of the scalp on the left side, which caused a hemorrhage; a hemorrhage in the right side of the deep muscles around the first two cerebral vertebrae; and a sheering away of the ligaments between the first and second bones. The doctor said that such sheering of the ligaments occurred only in automobile accidents when the victim suffered a heavy impact in those areas. There was also bleeding around the brain and in the layers of the brain due to the impact at the back left part of the head. There were also six separate areas of hemorrhage in deep muscles in the back. Dr. DeFatta stated that the laceration as well as the areas of hemorrhage in the back muscles were caused by a blunt trauma ("something making an impact on those areas of the body"). The doctor said that it was very unlikely that there would be five or six areas of hemorrhage with a fall backward. Normally a fall would cause one solid area of hemorrhage. What

was present was more consistent with multiple blows to the area. The doctor noted a well-healed scar on the victim's left hip, which indicated some type of hip surgery. Dr. DeFatta declared that the cause of death was multiple blunt force traumatic injuries to the head as well as the neck of the victim. On cross-examination Dr. DeFatta could not recall if the victim had been treated at Charity Hospital, but defense counsel introduced the Medical Center of Louisiana records for the victim. The doctor said that the victim's back was surgically inspected for injuries during the autopsy.

Officer Anika Glover testified that in the early morning hours on September 19, 1999, she received a call from the area of Bourbon and St. Louis Streets around 3:45 a.m. When the officer arrived at the scene about 3:50 a.m., she saw a Lucky Dog vendor lying partially on the ground and partially against the wall. An African-American, Cleveland Moore, was holding the victim's head with ice to his head. The officer saw a stream of blood going down the sidewalk. The victim was not conscious; his eyes were dilated, fixed and open. He was not breathing. Officer Glover identified a number of photographs, including one from the riverside of Bourbon to Patout's Restaurant where the victim was found. The officer called out the crime lab, and the pictures were taken. Officer Glover indicated on the photo that the victim's shoulder was lying on the step to the restaurant in the

photo, and the rest of his body was on the sidewalk.

On cross-examination Officer Glover said that she spoke to Mr. Moore, and the restaurant manager, Dallas Hager. She had developed a suspect named Dave, and she turned all information over to the other officers, who would investigate the crime. Referencing the dispatch history provided by defense counsel, the officer said that the call went out at 3:57 a.m., and she arrived at the scene at 4:03 a.m. On redirect examination the officer noted that the description indicated that the perpetrator was wearing a white T-shirt and blue jean shorts.

Dallas Paul Hagar, the Lucky Dog supervisor, testified that he had made trips out to the victim's cart at 8:00 p.m., 10:00 p.m., midnight, and 2:00 a.m. on the night of the attack to pick up money and provide supplies. On the second time he passed by, Gregory Parker was videotaping the crowd with his camera. Hagar said that he had warned Parker the week before that videotaping people on the street could get him into trouble. Parker's station was at St. Louis and Bourbon Streets beside Patout's Restaurant and across the street from Chris Owen's Club. Parker was just returning to work after his hip surgery. At that time he was using a cane to help him walk, and someone had to push the Lucky Dog cart down to his location for him. At 3:55 a.m. Hagar received a call from another vendor that something had

happened on Parker's corner, and he went down to the location. It took him about ten minutes because he ran from 517 Gravier Street, the office location. When he arrived, the ambulance with Parker was pulling out. He saw a huge puddle of blood about fifteen feet from the cart, which was located approximately six to eight inches from the wall. He spoke to the female police officer, who told him that robbery was not the motive because the money was still there. Then Hagar told the police officer that Parker's video camera was missing. Two videos were still in the cart. On cross-examination Hagar stated that normally another Lucky Dog vendor would have been positioned by Chris Owens' Club; however, he did not work that night.

Detective Anthony Small testified that the victim was alive when he was transported to Charity Hospital, and he died at 1:41 p.m. that afternoon. The detective obtained the aggravated battery incident report, and he canvassed the area for additional evidence and additional witnesses. He located Donald Marshall through Eighth District Officer K.K. Karonja. At first Marshall wanted to remain anonymous because he lived and worked in the area. Although Marshall agreed to meet Detective Small, he did not appear. The police discovered that Marshall worked at Razoo's Bar located in the 500 block of Bourbon. Detectives Small and Archie Coffman, along

with Small's supervisor, Sgt. Gerard Dugae, met face to face with Marshall at Razoo's Bar. The officers presented a photographic lineup of six pictures to Marshall in the manager's office on the second floor of Razoo's Bar. When Marshall picked out photo number four, a picture of Lampton, he said: "That's your pipe guy." Marshall signed, dated, and wrote the time on photo number four, and he initialed, dated and indicated the time on the other five pictures. Based on Marshall's selection, Detective Small prepared an application for an arrest warrant as well as a search warrant. The detective executed the search warrant at 118 South Murat, Lampton's last known address, according to the NCIC computer. Lampton surrendered himself at the Fourth District police station. The officers advised him of his rights and transported him to the homicide department where Lampton was again advised of his rights. Lampton waived his rights and signed a waiver of rights form. Detective Dwight Deal conducted the questioning, and Lampton's statement was videotaped and tape-recorded. The taped statement was played for the jury.

According to the September 21, 1999 transcribed statement, Lampton was born on September 28, 1979 and lived at 2439 Murl Street, apt. 19. He also used his mother's address, 118 South Murat Street. Lampton stated that he was in Chris Owens' Club at about 3:45 a.m. Sunday morning. He was

with a crowd of people, but he was drinking with Brian. Lampton was leaving the club to go home. When he walked outside, there was a hot dog man on the corner. The vendor was a white, skinny male in about his forties. He was about five feet, eight inches tall with long hair. He was on the side of the street by Chris Owens' Club. Lampton said that he "had like a li'l argument" with the vendor. Lampton stated that he and Brian were "gettin' drunk" and "rappin' ... makin' beats on the wall of Chris Owens...and this man jus' out the blue moon...startin' ar..., aggravatin' us...tellin' us about gettin' off the corner, or from around his business area." Lampton identified the man as the hot dog man. Lampton explained that he and the hot dog man had a face to face argument about leaving the corner. Lampton said that the hot dog man pushed him and something clicked. Lampton stated that he "punched him in his, in his...in his head...jus' punched him. And he fell...I leaned, then leaned over him with another female that was on the corner..." He said that the victim just fell straight back head first.

Lampton continued that a female asked what was wrong, and Lampton remarked that he had hit the man, who then fell. He did not know where Brian was at the time. He thought that Brian saw him hit the hot dog man. As he walked away up Bourbon Street to the 300 block, Brian caught up to him, and they stopped in a stripper club for more drinks. He did not



see the hot dog man open his eyes or talk before leaving him in the woman's arms. Lampton related that he was wearing a white Tommy Hilfiger shirt (a button-down-the-front dress shirt), starched jeans, and white tennis shoes. He had a T-shirt on underneath. Lampton stated that he had four gold teeth and was wearing no hat that night. He drank a medium 190 octane Daiquiri. Brian was wearing blue jeans with a beige soldier rag scarf on his head. Lampton said that he had no stick in his hand; he was holding a drink. He claimed that he did not see the victim or anyone else with a video camera. He took no camera or anything else from the scene, the hot dog man, or the cart, but he could not say whether Brian had taken anything. Lampton stated that he went to jail that same morning about 5:30 a.m. because a stripper at the Temptations Club said that he took \$99.00 from the counter, and he was charged in municipal court. Lampton concluded:

I'm sorry that this man...has passed away from a blow to the face...because I did not have no intentions on tryin' to kill this man or hurt this man intentionally. All I wanted to do is jus' like...get him off of me, or out my face. And he had to really put his hands on me first. And I'm sorry the man is gone, cause I would not take no one's life from them. I am very much sorry...and I would like to see this man live again, which is not true. But I am sorry. I'm real sorry for it.

Lampton did not know Brian's address or whether he still went to the same club. Lampton had worked that night for a temporary service at the

Convention Center, A.T.S. Personnel.

Detective Small said that the warrant was executed at 118 South Murat Street, Lampton's last known address. The officers found the defendant's brother, David Lampton, in the house, but released him when they discovered his identity. The detective went to the Lucky Dog Office, but the camcorder was not on the cart. The victim's backpack, a cassette, a battery, and a camera case were on the cart when it was returned. The camera was never recovered. Detective Small said that the defendant's photo had been given to the media, and then he turned himself in.

On cross-examination the detective stated that he knew that Howard Lampton had been arrested on the municipal theft charge that morning. He admitted that he was aware that the victim had a dispute with two other males over what they were paid for pushing his cart to the Bourbon and St. Louis Street location. The detective stated that David Marshall told the officers that he saw Lampton, who struck Parker, being arrested down at the Temptations Club for theft.

Deborah Wesley, a criminalist, testified that she tested Lampton's T-shirt, shorts, and tennis shoes. Blood found only on the T-shirt was not enough to determine the type. On cross-examination she agreed that it could have been Lampton's blood.

Donald Marshall, (a full-time student at the time of trial) who had been working as a doorman at Razoo's Bar at the time of the crime, testified that he was standing outside the door closest to St. Louis Street. Razoo's Bar was located in the middle of the block across from Chris Owen's Club. He knew the Lucky Dog vendor and had spoken to him several times. Marshall said that the victim videotaped all the problems that occurred across the street at Chris Owens' Club. He related that around 3:45 a.m. a group of people were over at the Lucky Dog stand. Marshall stated that one "actually came across, came like over across the edge of the Lucky Dog stand and punched the Lucky Dog vendor that was, he was sitting on a stool and he punched him right in the face and knocked him off the stool." Marshall had seen the vendor on crutches; people had pushed his cart to his location for him. Marshall continued that there were four or five fairly young individuals, who "started beating him [Parker] and kicking him." They "were punching him in the head, in the back, and they were football kicking him to the point where he was literally on all fours just kind of like moving closer and closer to my door."

Marshall said that he was watching because it was his job to close Razoo's doors and to protect the customers and employees inside. He was making sure that "nothing goes into the club." Marshall estimated that the

beating went on for two to three minutes, but maybe up to four or five minutes. The people on the sidewalk moved into the street to get away from what was happening. Marshall had a clear view. When the victim was down on the ground on his stomach with his head to the side a little bit, one man reached behind his back, pulled out a pipe, and hit the victim in the head. Marshall identified Lampton as the man with the pipe. After striking the victim with the pipe, Lampton and the others ran down to St. Louis and up St. Louis toward Rampart Street. The police arrived within minutes. Marshall radioed the head bouncer, who called the manager. Then an ambulance was called. His manager and others crowded around the victim, but Marshall saw Parker just lying there. There was blood everywhere.

Marshall stated that he saw Lampton again around 4:30 or 5:00 the same morning. Lampton had been arrested three or four blocks down Bourbon Street in front of Temptations. After Razoo's Bar closed, the employees went down to the Alibi on Bienville Street. Marshall was on his way back home when he spotted Lampton. Marshall said that the area was well-lit due to street lighting and the lights on the clubs. He stated that he was absolutely sure that the defendant whom he had just identified was the man who struck the victim with the pipe. Marshall stated that he did not notify anybody at first because he was scared; he worked there and knew

what went on across the street at the corner and in general. Marshall knew Officer K.K. Karonga from working at Razoo's Bar. Marshall said he trusted the officer, and spoke to him the next day. Officer Karonga put Marshall in touch with someone he trusted, Detective Small. The detective went to see Marshall at work when he did not meet the officer at police headquarters according to prior arrangements. Marshall explained that someone on the street asked him why he was going to the police station that day, and he "got spooked..." According to Marshall, Detective Small brought a set of photographs and asked him if he recognized anybody. Marshall picked out one photo as the man who hit the victim with the pipe, and he signed the back of that photo.

On cross-examination Marshall said that he did not know which man punched the victim in the nose and knocked him off the stool because he "couldn't see exactly who hit him." Marshall said that when the victim was being kicked, he was down on his knees. Marshall said: "[T]hey were just mauling him [Parker]." Marshall stated that one went behind his back to pull something out; he thought it was a gun and started to close Razoo's doors. Then the man pulled out the pipe and hit the victim in the head. The fight started on the corner and moved toward him. When confronted with prior testimony that the incident began as a pushing match and then turned

into a violent altercation where three or four individuals were beating one, Marshall agreed that was correct. He said that the group of men, including Howard Lampton, had attempted to enter Razoo's Bar through his door earlier that night, but they did not go in.

#### Errors Patent

A review of the record reveals no errors patent.

#### Assignment of Error Number 1

Lampton contends that the State failed to prove beyond a reasonable doubt Lampton's identity as the perpetrator of the alleged manslaughter of Gregory Parker. He claims that the testimony of the State's only identification witness, Donald Marshall, is not sufficient under the criteria set out in *Manson v. Braithwaite*, 432 U.S. 98, 97 S.Ct. 2243, 53 L.Ed.2d 140 (1977). Lampton asserts that Marshall was working one-half block away; he did not see the beginning of the altercation when the victim was knocked from his stool; he did not talk to the police or provide a description at the scene; and he mistakenly connected Lampton to the attack on the hot dog man when he saw Lampton being arrested later that morning in front of Temptations.

In *State v. Tapp*, 99-2279, p. 16 (La. App. 4 Cir. 5/30/01), 788 So.2d 1215, 1225-26, this Court discussed sufficiency of the evidence as to the

identity of the perpetrator:

In evaluating whether evidence is constitutionally sufficient to support a conviction, an appellate court must determine whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the defendant guilty beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); *State v. Green*, 588 So.2d 757 (La.App. 4 Cir.1991). However, the reviewing court may not disregard this duty simply because the record contains evidence that tends to support each fact necessary to constitute the crime. *State v. Mussall*, 523 So.2d 1305 (La.1988). The reviewing court must consider the record as a whole since that is what a rational trier or [sic] fact would do. If rational triers of fact could disagree as to the interpretation of the evidence, the rational trier's view of all the evidence most favorable to the prosecution must be adopted. The fact finder's discretion will be impinged upon only to the extent necessary to guarantee the fundamental protection of due process of law. *Mussall; Green; supra*. "[A] reviewing court is not called upon to decide whether it believes the witness or whether the conviction is contrary to the weight of the evidence." *State v. Smith*, 600 So.2d 1319 (La.1992) at 1324.

In addition, when circumstantial evidence forms the basis of the conviction, such evidence must consist of proof of collateral facts and circumstances from which the existence of the main fact may be inferred according to reason and common experience. *State v. Shapiro*, 431 So.2d 372 (La.1982). The elements must be proven such that every reasonable hypothesis of innocence is excluded. La. R.S. 15:438. This is not a separate test from *Jackson v. Virginia, supra*, but rather an

evidentiary guideline to facilitate appellate review of whether a rational juror could have found a defendant guilty beyond a reasonable doubt. *State v. Wright*, 445 So.2d 1198 (La.1984). All evidence, direct and circumstantial, must meet the *Jackson* reasonable doubt standard. *State v. Jacobs*, 504 So.2d 817 (La.1987).

*State v. Boudreaux*, 2000-0073, p. 5 (La.App. 4 Cir. 12/20/00), 777 So.2d 596, 598-99, (*quoting State v. Ragas*, 98-0011, pp. 13-14 (La. App. 4 Cir. 7/28/99), 744 So.2d 99, 106-107).

When identity is disputed, the State must negate any reasonable probability of misidentification in order to satisfy its burden to establish every element of the crime charged beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. at 307, 99 S.Ct. at 2781, 61 L.Ed.2d 560 (1979); *State v. Smith*, 430 So.2d 31, 45 (La. 1983). In meeting its obligation to negate any reasonable probability of misidentification, the State is entitled to present the entire process by which the defendant was identified and linked to the homicide. *State v. Edwards*, 97-1797 (La. 7/2/99), 750 So.2d 893, *cert. denied*, 528 U.S. 1026, 120 S.Ct. 542, 145 L.Ed.2d 421 (1999). In reviewing the record to determine sufficiency of the evidence, a jury's credibility decisions should not be disturbed unless clearly contrary to the evidence. *State v. Brown*, 97-2260 (La. App. 4 Cir. 10/6/99), 746 So.2d 643, 647; *State v. Harris*, 624 So.2d 443, 447 (La. App. 4 Cir. 1993), *writ denied*, 93-2609 (La. 6/24/94), 640 So.2d 1339.



Lampton claims that his identity as the perpetrator is a key issue and the State did not prove the identity element. Lampton gave a statement and admitted that he was there and punched the victim in the face. However, he denied hitting Parker with a pipe, and he stated that the victim fell. Lampton maintains that the testimony of Donald Marshall, the only identification witness, should be evaluated under the criteria set forth in *Manson v. Braithwaite, supra*. Lampton argues that Marshall's photographic and in-court identifications were tainted because he saw Lampton a few hours later being arrested a few blocks away. The State counters that under the *Manson* factors Marshall's identification is constitutionally reliable, and there was sufficient evidence to convict Lampton of manslaughter.

To suppress an identification, Lampton must first prove that the identification procedure was suggestive. *State v. Prudholm*, 446 So.2d 729, 738 (La.1984). An identification procedure is suggestive if, during the procedure, the witness' attention is unduly focused on the defendant. *State v. Robinson*, 386 So.2d 1374, 1377 (La.1980). In *State v. Simmons*, 99-1154, pp. 8-9 (La. App. 4 Cir. 12/8/00), 779 So.2d 856, 862, quoting *State v. Thibodeaux*, 98-1673, pp. 20-21 (La. 9/8/99), 750 So.2d 916, 932, *cert. denied*, 529 U.S. 1112, 120 S.Ct. 1969, 146 L.Ed.2d 800 (2000), this Court stated:

The Supreme Court held in *Manson v.*

*Brathwaite*, 432 U.S. 98, 97 S.Ct. 2243, 2254, 53 L.Ed.2d 140 (1977), that despite the existence of a suggestive pretrial identification, an identification may be permissible if there does not exist a "very substantial likelihood of irreparable misidentification." Under *Manson*, the factors which courts must examine to determine, from the totality of the circumstances, whether the suggestiveness presents a substantial likelihood of misidentification include: 1) the witness' opportunity to view the criminal at the time of the crime; 2) the witness' degree of attention; 3) the accuracy of his prior description of the criminal; 4) the level of certainty demonstrated at the confrontation; and 5) the time between the crime and the confrontation. *Id.*

In *State v. Bright*, 98-0398 (La. 4/11/00), 776 So.2d 1134, the defendant Bright challenged the in-court identification made by a witness on a number of grounds, including an argument that the identification was unreliable and questionable. The Supreme Court found that the photo lineup did not unduly focus upon Bright and the other individuals had sufficient similarities to Bright. As to the in-court identification of Bright as the shooter, the Court considered the totality of the circumstances to decide whether there was a substantial likelihood of irreparable misidentification under the *Manson* factors. The Court noted that the witness' three opportunities to view Bright that night provided an independent basis for his in-court identification. The witness consistently testified that there was light enough for him to see Bright even though there was testimony that it was

dark outside the bar. The witness' attention was focused on Bright.

Although there were some problems with the witness' initial description, there was no indication that he hesitated or was uncertain in identifying Bright. The fact that the photographic lineup was presented to the witness eighteen days after the incident was not significant, especially in light of the fact that there was no undue suggestiveness in the lineup itself. *Id.*

In the present case, Donald Marshall was Razoo's doorman and security person, who was standing at the door of the bar. His job was to watch the street for any trouble so that he could close the door if it became necessary to protect the bar and its patrons. He testified that the street and the sidewalk were well-lit because the bars and clubs had lit signs, and there were street lights. Razoo's Bar was located toward the middle of the block not far from the corner where the attack occurred. Marshall said that he could clearly see the victim as he was being beaten at the corner, and people were clearing the sidewalk. The victim was moving toward Razoo's door. Marshall was watching closely when one of the perpetrators, who was later identified as Lampton, pulled something from behind his back. Marshall said that he thought that it was a gun and prepared to close the door to the bar. Therefore, his attention was focused on the perpetrators and the victim. Marshall testified that he then recognized Lampton a couple of hours later

when Marshall saw Lampton being arrested in front of Temptations.

Marshall explained that he had not told the investigating police officer what he observed (or provided a description) because he did not want to become involved. Even after he had contacted an officer he trusted the next day, Marshall was afraid and did not meet the officer, who was compelled to seek Marshall out at work. Marshall identified Lampton in a photo lineup on Monday, September 20, 1999, the day after the attack. He did not hesitate when he identified the man who had struck the victim in the head with the pipe. Marshall expressed no doubt when he identified Lampton in court as the perpetrator who hit the victim with a pipe.

Marshall clearly identified Lampton in a photo lineup and at trial as the one perpetrator (of the three or four beating the victim), who pulled a pipe from behind his back and hit the victim in the back of the head. The defense argument that Marshall's identification was tainted by the fact that he saw Lampton being arrested a couple of hours later and mistakenly connected Lampton to the attack (with a pipe) on Parker has no merit. The evidence, including Marshall's identification of Lampton, viewed in the light most favorable to the State, was sufficient to convict Lampton of manslaughter.

#### Assignment of Error Number 2

Lampton argues that his thirty year sentence is excessive. He notes the fact that he was not twenty years old at the time of the incident and the fact that he had no felony convictions. Lampton points out that he was not solely responsible for the victim's injuries and argues that there is some doubt as to whether he inflicted the fatal blow. Lampton claims that the trial court noted the severity of the victim's injuries, but did not consider the mitigating factors; there was also no presentence investigation. The State correctly notes that under La. C.Cr.P. art. 875 and La. R.S. 15:1132, the trial court was not required to order a PSI. The State points out that Lampton was charged with second degree murder, not manslaughter.

In *State v. Points*, 2000-1371, pp. 8-10 (La. App. 4 Cir. 4/11/01), 787 So.2d 396, 402, this Court stated:

A sentence may be reviewed for constitutional excessiveness even though it is within statutory guidelines. *State v. Cann*, 471 So.2d 701, 703 (La. 1985). In reviewing a sentence for excessiveness, the Court must first determine whether the trial court complied with La. C.Cr.P. art. 894.1 in imposing the sentence and then determine whether the sentence is too severe given the circumstances of the case and the defendant's background. *State v. Lobato*, 603 So.2d 739, 751 (La. 1992). If the sentence needlessly imposes pain and suffering and is grossly out of proportion to the seriousness of the offense so as to shock our sense of justice, then it may be determined to be unconstitutionally excessive as violative of La. Const. art. 1, § 20 (1974). *Id.* However, a sentence imposed will not be set aside absent a showing of abuse of the trial

court's wide discretion to sentence within statutory limits. *Id.*

Once adequate compliance with La. C.Cr.P. art. 894.1 is found, the court may consider whether the sentence is excessive in light of sentences imposed by other courts in similar circumstances.

\* \* \*

The trial court has great discretion in sentencing within statutory limits. *State v. Trahan*, 425 So.2d 1222 (La.1983). A sentence should not be set aside as excessive in the absence of a manifest abuse of discretion. *State v. Washington*, 414 So.2d 313 (La.1982).

At the October 24, 2000 sentencing hearing in the present case, defense counsel expressed Lampton's sorrow and regret for what happened and noted that the prosecutor had relayed that information to the victim's family. The trial court stated:

Okay. All right, for the record in this matter, the Court has reviewed the provisions of Article 894.1. The Court believes this is an extremely serious offense. There's no more serious an offense, in this Court's opinion, than killing another human being who [sic] you really had no relationship with.

The victim in this matter was doing his job that night. He was a Lucky Dog salesman in the French Quarter. According to the State's witness, he was severely beaten for a long period of time, stomped and then finally hit in the head with a piece of pipe, which according to the coroner, crushed his skull and caused his death. The Court believes that's about as bad as you can get in killing another human being. So the offense, in this Court's mind, is extremely serious.

The Court also has to look at the background of the defendant. It's the Court's understanding that he does not have any prior felony convictions. So, because of his lack of any serious prior record, the Court is not going to give him the maximum sentence that the Court could give in this case which is forty years, but because of the severity of the crime in the way that it was inflicted, the Court believes it demands a substantial sentence. And it is going to be the sentence of this Court that he serve Thirty (30) Years at hard labor with the Department of Corrections. On that sentence, by law, he will be given credit for whatever time he has served in jail since his original arrest on the charge.

Lampton objected to the sentence and filed a motion to reconsider sentence, which the trial court denied.

The sentencing transcript shows that the trial court considered the guidelines set out in La. C.Cr.P. art. 894.1 before imposing the thirty year sentence. Although Lampton avers that the trial court did not consider the mitigating factors, the trial court noted that Lampton had no prior felony convictions, and Lampton's age was apparent. The trial court noted that Lampton would have received the maximum sentence but for the lack of a felony criminal record. Once there has been adequate compliance with La. C.Cr.P. art. 894.1, the reviewing court may consider whether the sentence is excessive in light of sentences imposed by other courts in similar circumstances. *State v. Gibson*, 99-0946 (La. App. 4 Cir. 5/3/00), 761 So.2d

670, 679.

In *State v. Points, supra*, p. 10, 787 So.2d at 403, this Court reviewed the imposition of the maximum forty year sentence for a youthful first offender convicted of manslaughter:

While it is true that the defendant is a somewhat youthful first offender, maximum or near maximum sentences for manslaughter convictions have been affirmed in several cases even where the defendant had no prior convictions. In *State v. Bowman*, 95-0667 (La.App. 4 Cir. 7/10/96), 677 So.2d 1094, this Court affirmed a thirty-three year manslaughter sentence for a sixteen-year-old first offender who drove the car but did not pull the trigger in a drive-by shooting. In *State v. Black*, 28,100 (La.App. 2 Cir. 2/28/96), 669 So.2d 667, the Second Circuit affirmed a forty year sentence for a twenty year old defendant who pleaded guilty to a reduced charge of manslaughter. Moreover, maximum or near maximum sentences for manslaughter convictions have been affirmed in several cases where the defendant had no prior convictions. Cf. *State v. Maxie*, 594 So.2d 1072 (La.App. 3 Cir.1992); *State v. King*, 563 So.2d 449 (La.App. 1 Cir.1990). [Footnote omitted.]

Lampton was indicted for second degree murder, and he was convicted of manslaughter with a sentencing range of zero to forty years. The trial court did not impose the maximum sentence because Lampton had no prior felony record. The trial court noted the seriousness of the crime of beating a person to death. The trial court based the sentence on the severity of the crime and the way that the victim was brutally beaten, struck on the



head, and killed. There is no abuse of the trial court's sentencing discretion.

Accordingly, the defendant's conviction and sentence are affirmed.

**AFFIRMED**