

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA * **NO. 2008-KA-0337**
VERSUS *
STACY O. JONES * **COURT OF APPEAL**
* **FOURTH CIRCUIT**
* **STATE OF LOUISIANA**

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 470-241, SECTION "J"
HONORABLE DARRYL A. DERBIGNY, JUDGE

JUDGE MICHAEL E. KIRBY

(Court composed of Judge Michael E. Kirby, Judge Max N. Tobias, Jr., Judge David S. Gorbaty)

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AFFIRMED

STATEMENT OF CASE

Defendant, Stacy O. Jones, was charged by bill of information on April 20, 2007 with aggravated battery in violation of La. R.S. 14:34. Defendant pleaded not guilty at arraignment. A hearing on defense motions was held on September 5, 2007. The record reflects that defense motions were satisfied.

On November 7, 2007, defendant was tried by a six-person jury and found guilty of the lesser included offense of second degree battery. On January 25, 2008, the defendant was sentenced to five years at hard labor with credit for time served. The court suspended four years of the sentence and placed the defendant on five years of active probation. At the time of sentencing, the defendant had been incarcerated for approximately one year. Defendant filed a notice of appeal which the trial court granted.

STATEMENT OF FACT

Betty White testified that she and the defendant had been in a relationship for approximately three years before the incident. The defendant lived and worked

on an oyster boat for extended periods. When he was not on the boat, he was free to stay with her.

Betty White testified that on the morning of February 16, 2007, she returned to her apartment to find the defendant's bags in front of her door. Ms. White had been at the hospital that night watching her niece. Ms. White found the defendant at her neighbor's house where he had waited for her to return. She left shortly thereafter as she had only come home to retrieve some medicine and returned to the hospital.

She returned to the apartment between six and seven o'clock that evening. Ms. White conversed briefly with the defendant and then told him that she was fed up and that they were not going to make it because their relationship was not going anywhere. She told Jones that she was going to visit her sister-in-law in Kansas for a few weeks to rest her nerves.

Ms. White was sitting on the bed, and the defendant came to her and placed her head on his stomach. White believed that the Jones was attempting to console her. She then felt something warm coming down her neck and jumped back. She put her hand on her neck and then saw that it was full of blood. Realizing that she had been cut, she moved quickly to the bathroom to look in the mirror. She stated that she saw her throat lying wide open. She placed a large white towel around the wound. The towel quickly became saturated, and she obtained another towel to hold over the wound.

At this point, Jones wanted to know what she was going to tell the authorities, and he would not let her out of the room. He was still holding the knife. Ms. White told him that she was going to tell the truth, that he had cut her.

Jones wanted her to say that she had cut herself after falling on a glass coffee table. Then Jones snatched the phone from the wall and threw it into the front room.

Ms. White stated that she composed herself to prevent additional bleeding and then told Jones that she would say that she had been mugged coming home. Jones left the apartment to retrieve a phone from a neighbor and may have called for help. Ms. White got her keys and left the apartment. Her neighbor saw her in the hall and called 911. Ms. White left the building and waited for the ambulance on the front steps of the apartment.

Ms. White was treated by the EMS personnel and then transported to a hospital where she required numerous stitches to close the wound.

At trial, Ms. White identified the knife used by the defendant. She had seen Jones with the knife on previous occasions.

New Orleans police officer Corey Clark testified that on February 16, 2007, he was dispatched to 3400 Garden Oaks Drive to investigate a disturbance in apartment 1308. Upon arriving at the apartment complex, Officer Clark discovered Betty White and the defendant seated on the front steps. Ms. White was holding a bloody towel to the left side of her neck. Officer Clark notified EMS. While Ms. White was being treated, Officer Clark questioned her concerning how she was injured. Officer Clark then arrested the defendant.

Officer Clark identified several photographs depicting blood stains and splatter in the apartment. He also identified a photograph of a knife lying on the floor by the bed. The knife was admitted into evidence.

ERRORS PATENT

A review of the record for errors patent reveals none.

ASSIGNMENT OF ERROR

In his sole assignment of error, defendant argues that he received and excessive sentence. However, this claim was not preserved for appeal. The sentencing transcript record reflects that defense counsel did not orally object to the sentence for any reason. Furthermore, the record reflects that no motion to reconsider the sentence was filed.

As this Court has held, pursuant to the clear language of La. C.Cr.P. art. 881.1, the failure to make an oral objection to the sentence at the time of sentencing or to file a timely motion to reconsider sentence, setting forth the specific ground of excessiveness, shall preclude the defendant from raising the claim of excessiveness on appeal or review. See *State v. Alexander*, 2006-1274, p. 10 (La. App. 4 Cir. 5/16/07), 958 So. 2d 1203, 1208; *State v. Wilson*, 2006-1421, pp. 19-20 (La. App. 4 Cir. 3/28/07), 956 So. 2d 41, 52-53; *State v. Tyler*, 98-1667, p. 14 (La. App. 4 Cir. 11/24/99), 749 So.2d 767, 775. Given the failure to file a motion to reconsider sentence or to orally object to the sentence at the time it was imposed, defendant is precluded from raising a claim of excessive sentence on appeal or review.

CONCLUSION

For these reasons we affirm the defendant's conviction and sentence.

AFFIRMED.