NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2012 KA 0789

STATE OF LOUISIANA

VERSUS

SELETHA BELL

Judgment Rendered: DEC 21 2012

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On Appeal from the Twenty-Second Judicial District Court
In and for the Parish of Washington
State of Louisiana
No. 10 CR8 111244

Honorable William J. Crain, Judge Presiding

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BEFORE: WHIPPLE, McCLENDON, AND HIGGINBOTHAM, JJ.

McCLENDON, J.

Defendant, Seletha L. Bell, was charged by bill of information with sexual battery (count one) and aggravated battery (count two), in violation of LSA-R.S. 14:43.1 and LSA-R.S. 14:34. She entered a plea of not guilty. After a trial by jury, defendant was found guilty as charged on both counts.[1] Subsequently, the trial court sentenced defendant to five years imprisonment at hard labor on count one and two years imprisonment at hard labor on count two. The trial court ordered that the sentences be served concurrently. The trial court denied defendant's oral motion to reconsider sentence. Defendant now appeals, assigning error to the trial court's denial of her motion to reconsider sentence and the constitutionality of the sentences. For the following reasons, we affirm the convictions and sentences.

STATEMENT OF FACTS

Between October 18, 2010 and October 20, 2010, eighteen-year-old T.C., the victim, spent two nights at a residence in Bogalusa that was being occupied by twenty-one-year-old defendant and nineteen-year-old codefendant, Monique Colter, who were his neighborhood friends.[2] During the visit, defendant used her cell phone to video record herself and codefendant as they physically and sexually assaulted the victim. According to the victim, the codefendants beat him with a pipe and belts, gave him a "nasty" alcoholic beverage and made him smoke marijuana. They would not allow him to leave the home, forced him to remove his clothing at knifepoint, and stuck a broomstick up his "ass." The victim confirmed that the stick was inserted and that it was painful and against his will. The victim further stated that the codefendants burned him with a cigarette lighter "down below." The victim testified that the ordeal lasted for about two hours. The victim exited the residence later in the morning while the codefendants were still asleep.

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[1] Defendant was charged and tried with codefendant Monique Colter. Codefendant Colter was also found guilty as charged on both counts. She is not a party to this appeal.

[2] Herein, the victim will be identified by initials to protect his identity. LSA-R.S. 46:1844W.

Shortly after the victim got home on October 20, 2010, he told his mother about parts of the incident and she took him to the hospital where, according to the medical records, he divulged the physical assault, but not the sexual assault. Thus, a full examination was not conducted although it was noted that the victim had bruises and abrasions. After they left the emergency room, the victim reported the incident to the Bogalusa Police Department on October 20, 2010, and was interviewed by Captain Kendall Bullen on October 25, 2010. The victim was referred back to the hospital where he again did not disclose the full nature of the incident.

Reportedly, the codefendants showed the video recordings to Rochelle and Rashanda Magee, also Bogalusa residents and acquaintances of the victim and codefendants, and both girls gave written statements to the police and later testified at the trial regarding their observations. In seventeen-year-old Rashanda's written statement, she stated she observed the victim, unclothed at the time, being beaten with a belt; she added at the trial that she also saw him being burned with cigarette lighters "down in his" crotch area and "playing with his self." Further, twenty-one-year-old Rochelle testified that she observed one of the codefendants (she couldn't distinguish which one) sticking a drinking straw and mop or broom handle "up his [the victim's] butt." She also saw the victim being burned with cigarettes and a cigarette lighter on the legs and private area, punched in the head, and hit in the face as he ducked. The police were unable to recover the video recordings from defendant's cell phone.

ASSIGNMENTS OF ERROR NUMBERS ONE AND TWO

In a combined argument, defendant contends that the trial court should have granted her motion to reconsider sentence as the sentences are constitutionally excessive. Defendant notes that at the time of the sentencing, she was a twenty-two-year-old woman who had no prior adult criminal record. Defendant further contends that the trial court erred in considering an element of the aggravated battery offense, the use of a dangerous weapon, as an aggravating sentencing factor in this case. She notes that she received a

disability check and is also a person of limited capacity, contending that she may have been unable to appreciate the victim's mental deficiencies. Further, defendant alleges that her codefendant received a more lenient sentence, although her convictions were based on the same facts. Finally, defendant notes that she is not the worst offender and this is not the worst type of sexual battery or aggravated battery.

The Eighth Amendment to the United States Constitution and Article I, Section 20, of the Louisiana Constitution prohibit the imposition of excessive or cruel punishment. Although a sentence falls within statutory limits, it may be excessive. **State v. Sepulvado**, 367 So.2d 762, 767 (La. 1979). A sentence is considered constitutionally excessive if it is grossly disproportionate to the seriousness of the offense or is nothing more than a purposeless and needless infliction of pain and suffering. A sentence is considered grossly disproportionate if, when the crime and punishment are considered in light of the harm done to society, it shocks one's sense of justice. The sentence imposed will not be set aside absent a showing of manifest abuse of the trial court's wide discretion to sentence within the statutory limits. **State v. Andrews**, 94-0842 (La.App. 1 Cir. 5/5/95), 655 So.2d 448, 454.

Louisiana Code of Criminal Procedure article 894.1 sets forth the factors for the trial court to consider when imposing sentence. While the entire checklist of LSA-C.Cr.P. art. 894.1 need not be recited, the record must reflect the trial court adequately considered the criteria. In light of the criteria expressed by article 894.1, a review for individual excessiveness should consider the circumstances of the crime and the trial court's stated reasons and factual basis for its sentencing decision. **State v. Brown**, 02-2231 (La.App. 1 Cir. 5/9/03), 849 So.2d 566, 569.

Ten years is the maximum term of imprisonment for both offenses herein, sexual battery and aggravated battery, and a fine of not more than five thousand dollars may be imposed for the offense of aggravated battery. LSA-R.S. 14:43.1C(1); LSA-R.S. 14:34. Thus, the five-year sentence imposed on the

sexual battery conviction is mid-range, while the two-year sentence imposed on the aggravated battery conviction is at the lower end of the sentencing range. While defendant alleges that codefendant received a lighter sentencing, it is well established that sentences must be individualized to the particular offender. **State v. Batiste**, 594 So.2d 1, 3 (La.App. 1 Cir. 1991). Additionally, it is within the purview of the trial court to particularize the sentence because the trial judge "remains in the best position to assess the aggravating and mitigating circumstances presented by each case." **State v. Cook**, 95-2784 (La. 5/31/96), 674 So.2d 957, 958, cert. denied, 519 U.S. 1043, 117 S.Ct. 615, 136 L.Ed.2d 539 (1996) (per curiam).

According to his mother, the victim has psychological disorders, receives Social Security benefits, and was in special education programs at school. She knew the codefendants as neighborhood acquaintances and the instant offenses were committed when she allowed him to stay overnight with them. She stated that when the victim returned, he was acting abnormally and she knew something was wrong. The victim ultimately told her the codefendants gave him marijuana and alcohol at the time of the offenses. She observed bruises, belt whelps, and burn marks on her son's body. She stated that her son has been hesitant to talk about the details of the incident. Based on the testimony presented by the Magee sisters at the trial, defendant was proud of her actions, passing on the details of what she and codefendant did to the "white boy" and displaying the video footage.

In sentencing defendant, the trial court reviewed a presentence investigation report (PSI) and noted defendant's age, her juvenile criminal record, and her lack of an adult criminal record. As further noted by the trial court at the sentencing, unlike codefendant, defendant did not express remorse for her actions. The trial court noted the nature of the offenses and the victim's vulnerability and mental deficiencies that defendant knew or should have known about. The trial court also noted that the trial evidence and PSI indicated that defendant was the primary instigator of the acts that took place, and that a

dangerous weapon and threats of violence were used in connection with the offenses. The trial court noted that there was an undue risk that defendant would commit another crime if not incarcerated.

We find no error in the trial court's observations regarding defendant's use of a weapon. The trial judge took cognizance of the criteria set forth in LSA-C.Cr.P. art. 894.1. The use of a dangerous weapon is an element of only one of the offenses, aggravated battery, and was therefore properly noted as an aggravating sentencing factor herein. At any rate, this court will not set aside a sentence on the ground of excessiveness if the record supports the sentence imposed. LSA-C.Cr.P. art. 881.4D. Considering the great discretion afforded the trial court in fashioning defendant's punishment and bearing in mind the heinous nature of the instant crimes, we find that the record provides ample justification for the sentences imposed herein. The sentences imposed are not grossly disproportionate to the severity of the offenses or shocking to the sense of justice and, therefore, are not unconstitutionally excessive. Thus, we find no error in the trial court's denial of defendant's oral motion to reconsider sentence. The assignments of error lack merit.

CONVICTIONS AND SENTENCES AFFIRMED.