

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA  
COURT OF APPEAL  
FIRST CIRCUIT

2015 KA 0764

STATE OF LOUISIANA

VERSUS

MIGUEL CHRISTIAN THERIOT

Judgment Rendered: NOV 09 2015

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On Appeal from the  
Thirty-Second Judicial District Court  
In and for the Parish of Terrebonne  
State of Louisiana  
No. 666893

The Honorable David W. Arceneaux, Judge Presiding

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Josephy Waitz, Jr.  
District Attorney  
Houma, LA

Attorneys for Plaintiff/Appellee  
State of Louisiana

Jason Lyons  
Jason Dagate  
Marian M. Hamilton  
Assistant District Attorneys  
Houma, LA

Bertha Hillman  
Thibodaux, LA

Attorney for Defendant/Appellant  
Miguel Christian Theriot

\*\*\*\*\*

**BEFORE: GUIDRY, HOLDRIDGE, AND CHUTZ, JJ.**

*Guidry, Jr. concurs in the result.*

## **HOLDRIDGE, J.**

The defendant, Miguel Christian Theriot, was charged by bill of information on count one with aggravated flight from an officer, a violation of La. R.S. 14:108.1(C), and on count two with possession of a firearm by a convicted felon, a violation of La R.S. 14:95.1.<sup>1</sup> The defendant entered a plea of not guilty on both counts. After a trial by jury, the defendant was found guilty as charged on both counts. The State filed a habitual offender bill of information as to counts one and two.<sup>2</sup> After a hearing, the defendant was adjudicated a fourth-felony habitual offender for the enhancement of count one, and a third-felony habitual offender for the enhancement of count two.<sup>3</sup> The trial court denied the defendant's motion to deviate from the habitual offender sentencing. The defendant was sentenced to life imprisonment at hard labor without the benefit of probation, parole, or suspension of sentence on both counts, to be served concurrently. The trial court denied the defendant's pro se motion to reconsider sentence. The defendant now appeals, assigning error to the constitutionality of the enhanced, life sentences and to the State's use of the same predicate convictions to enhance the penalties on both counts. For the following reasons, we affirm the convictions, habitual offender adjudications, and sentences.

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<sup>1</sup> The defendant's status as a convicted felon as to count two was based on his March 29, 2007 guilty pleas to possession of Xanax (alprazolam) (Schedule IV controlled dangerous substance) and attempted possession of a firearm in the presence of a controlled dangerous substance (offenses that occurred on January 6, 2007) and his February 11, 2008 guilty plea to possession of cocaine (which occurred on May 28, 2007).

<sup>2</sup> The trial court denied the defendant's subsequent motion to quash the habitual offender bill of information (based on the use of juvenile convictions) and this Court denied the defendant's writ of review. **State v. Theriot**, 2014-1661 (La. App. 1st Cir. 1/12/15) (unpublished).

<sup>3</sup> The defendant's March 29, 2007 guilty plea to possession with intent to distribute marijuana (an offense that occurred on January 6, 2007) and February 11, 2008 guilty plea to distribution of cocaine (which occurred on August 16, 2006) were used to establish his third-felony habitual offender status on count two. All five of the prior convictions, from the 2007 and 2008 guilty pleas, were considered in the adjudication of the defendant as a fourth-felony habitual offender on count one.

## STATEMENT OF FACTS

On September 1, 2013, at approximately 2:26 a.m., Deputy Keith Faul of the Terrebonne Parish Sheriff's Office (TPSO) was on patrol when he observed the driver of a red Ford Taurus wearing a white shirt and traveling without a seatbelt. When he observed the traffic violation, Deputy Faul was travelling in a fully marked patrol unit headed eastbound in the inside lane on Hollywood Road, a four lane road, which included two westbound lanes and two eastbound lanes. The driver, later identified as the defendant, was traveling in the opposite direction across the bridge that separates North and South Hollywood Road. As the defendant passed Deputy Faul, the deputy immediately turned his unit around, and activated his emergency lights to conduct a traffic stop. After making the U-turn, Deputy Faul was traveling westbound towards Martin Luther King Boulevard, behind the defendant's vehicle. The defendant slowed down as he approached the intersection and turned right onto Martin Luther King Boulevard. As Deputy Faul called for assistance, the defendant began to speed up. The deputy activated his emergency siren and continued to pursue the vehicle northbound on Martin Luther King Boulevard, with emergency lights still activated along with the siren.

As they approached Lowe's Court (a private crossover drive that runs alongside the Lowe's store and goes up to Main Street), the defendant took the crossover headed eastbound and Deputy Faul continued the pursuit. The defendant made a quick left turn without stopping at the stop sign, and proceeded northbound on Highway 24 South (West Main Street), a one-way, two lane road that travels southbound. As Deputy Faul continued the pursuit with the unit emergency lights and siren still activated, both he and the defendant had to dodge oncoming traffic. Vehicles, including Deputy Faul's unit, veered to the shoulder to avoid head-on collisions.

Deputy Michael Navarre, a K-9 officer of the TPSO, was on West Main just north of Lowe's Court when he heard Deputy Faul's radio request for assistance. When Deputy Faul and the defendant were on Lowe's Court, Deputy Navarre pulled over on the side of Roy Street and activated the police lights of his Tahoe. As the defendant and Deputy Faul approached Roy Street, Deputy Navarre joined in the pursuit. As he passed Roy Street, the defendant slowed down, veered to the left, and began slowly traveling ("at a slow crawl") on the street shoulder. The defendant exited the vehicle just before it hit a trash can, ran into a ditch, and came to a stop. The defendant, who was wearing a white shirt and black jeans, began running westbound onto private property, stumbling and nearly falling as he attempted to hold up his jeans that were sagging down. The defendant ran between two houses along the back of Roy Street, towards a wooded area. As Deputy Faul lost sight of the defendant while pursuing him on foot, Deputy Navarre actively joined the foot pursuit with his K-9. Deputy Faul stayed back to continue to search the outer tree-line of the wooded area, as Deputy Navarre went into the open field with the K-9 in pursuit of the defendant.

After searching the tree-line for a few seconds, Deputy Faul observed the defendant on the ground (just inside the wooded area) lying on his back with his pants' legs down to his ankles, approximately ten feet from the officer. Deputy Navarre heard Deputy Faul as he commanded the defendant to come out and show his hands. The defendant continued to ignore commands as both officers ordered him to come out. Deputy Navarre warned that he would release his K-9, and the defendant slowly stood up. As the defendant attempted to pull his pants up, the officers instructed him to show his hands. He exited the wood line, looking around as he lunged to his knees toward Deputy Navarre and the K-9. The K-9 grabbed the defendant's shirt (biting the defendant at some point) as the officers repeatedly

commanded the defendant to get on the ground face first. Deputy Navarre did a front-kick maneuver to get the defendant on the ground and to separate him from the K-9, which complied with the deputy's command to release the defendant's shirt. At that point, Deputy Faul handcuffed the defendant, escorted him to the police units and advised him of his **Miranda** rights.<sup>4</sup> Other officers arrived on the scene and apprehended a female passenger of the vehicle that was driven by the defendant. Deputy Navarre and Agent Kyle Bergeron began conducting a secondary search of the area to locate any other evidence that the defendant may have dropped during the pursuit, and Agent Bergeron located a pistol behind one of the houses.<sup>5</sup>

### **DOUBLE JEOPARDY CLAIM**

In assignment of error number two, the defendant argues that the "triple use" of the same convictions by the State to convict him on count one of possession of a firearm by a convicted felon and to enhance the sentences on both counts is barred by the prohibition against double jeopardy and by the guarantee of due process. The defendant argues that he received multiple punishments for the same offenses, which constitutes double jeopardy.

As previously noted, in support of the defendant's conviction on count two of possession of a firearm by a convicted felon, the State presented evidence of two (out of three) guilty pleas on March 29, 2007, to possession of Xanax and attempted possession of a firearm in the presence of a controlled dangerous substance (offenses that took place on January 6, 2007) and a February 11, 2008

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<sup>4</sup> **Miranda v. Arizona**, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

<sup>5</sup> The pistol was later sent to the Louisiana State Police Crime Lab for testing along with a reference swab of the defendant's DNA. Testing showed that the defendant's DNA matched the sample taken from the pistol. Specifically, the results indicated, "[a] partial DNA profile was obtained from the swab taken from the rough surfaces of the pistol. Miquel [sic] Theriot (Exhibit 2) cannot be excluded as the contributor of this profile." The probability that a random African-American could not be excluded was one out of 1.48 million.

guilty plea to possession of cocaine (an offense that occurred on May 28, 2007). Also in regard to count two, subsequent to the conviction the defendant was adjudicated a third-felony habitual offender. The adjudication was based on the third March 29, 2007 guilty plea, consisting of a possession with intent to distribute marijuana offense (which also took place on January 6, 2007) and an additional February 11, 2008 guilty plea to distribution of cocaine (which occurred on August 16, 2006). Thus, the convictions that the State used to prove the defendant's status as a convicted felon in obtaining the conviction on count two (possession of Xanax, attempted possession of a firearm in the presence of a controlled dangerous substance, and possession of cocaine) were not subsequently used to enhance count two. All five of the predicate convictions were considered when the defendant was adjudicated a fourth-felony habitual offender on count one, aggravated flight from an officer.

Habitual offender proceedings are not subject to double jeopardy constraints. The habitual offender hearing is not a trial, and legal principles such as res judicata, double jeopardy, the right to a jury trial and the like do not apply. Louisiana's habitual offender statute is simply an enhancement of punishment provision. **State v. Richardson**, 91-2339 (La. App. 1st Cir. 5/20/94), 637 So.2d 709, 715. It does not punish status and does not on its face impose cruel and unusual punishment. **State v. Dorthey**, 623 So.2d 1276, 1279 (La. 1993). Further, the habitual offender statute does not contain a sequential conviction requirement. Rather, the only requirement in the statute is that, for sentence enhancement purposes, the subsequent felony must be committed after the predicate conviction or convictions. **State v. Lowery**, 2004-0802 (La. App. 1st Cir. 12/17/04), 890 So.2d 711, 722, writ denied, 2005-0447 (La. 5/13/05), 902 So.2d 1018. Additionally, in **State v. Shaw**, 2006-2467 (La. 11/27/07), 969 So.2d 1233, 1245,

the Louisiana Supreme Court overruled its previous decisions in **State ex rel. Porter v. Butler**, 573 So.2d 1106 (La. 1991) and **State v. Sherer**, 411 So.2d 1050 (La. 1982) and held that “[t]here is no statutory bar to applying the habitual offender law in sentencing for more than one conviction obtained on the same date, whether the convictions result from separate felonies committed at separate times or arise out of a single criminal act or episode.”

Considering the foregoing, the trial court did not err in adjudicating the defendant a third-felony habitual offender on count two, based on prior convictions other than the predicate convictions used to obtain the underlying conviction on count two. Further, the trial court did not err in adjudicating the defendant a fourth-felony habitual offender on count one based on all of his prior convictions. We find no merit in the double jeopardy argument raised in assignment of error number two.

#### **EXCESSIVE SENTENCE CLAIMS**

In the first assignment of error, the defendant argues that the enhanced life sentences imposed on counts one and two are excessive in this case. The defendant specifically contends that the sentences are grossly disproportionate to the severity of the crimes and a needless infliction of pain and suffering. The defendant notes that he is not the worst type of offender and his offenses are not the worst type of offenses. The defendant contends that he panicked, drove down a one-way street, and inadvertently encountered oncoming traffic when the officer signaled him to stop for a seatbelt violation. He notes that the weapon found by the police was not discharged or used in the commission of a crime. The defendant concedes that the life sentences imposed by the trial court were mandated by the habitual offender law. The defendant argues, however, that his exceptional circumstances require a deviation from the law. The defendant notes that no one



was injured in any of the crimes that he committed, that there was no evidence that he ever intended to injure anyone, and that he received the same sentence as murderers and rapists. The defendant further contends that this case is a worthy example of one of the primary reasons behind the escalating growth of Louisiana's prison industrial complex. The defendant concludes that the sentences are a waste of scant economic and human resources and that he should be in a drug treatment facility as opposed to prison.

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. **State v. Andrews**, 94-0842 (La. App. 1st Cir. 5/5/95), 655 So.2d 448, 454. The trial court has great discretion in imposing a sentence within the statutory limits, and such a sentence will not be set aside as excessive in the absence of a manifest abuse of discretion. See **State v. Holts**, 525 So.2d 1241, 1245 (La. App. 1st Cir. 1988). 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 La. Code Crim. P. art. 894.1 need not be recited, the record must reflect the trial court adequately considered the criteria. **State v. Brown**, 2002-2231 (La. App. 1st Cir. 5/9/03), 849 So.2d 566, 569.

In **Dorthey**, 623 So.2d at 1280-81, the Louisiana Supreme Court recognized that if a trial judge determines that the punishment mandated by the Habitual



Offender Law makes no measurable contribution to acceptable goals of punishment or that the sentence amounts to nothing more than the purposeful imposition of pain and suffering and is grossly out of proportion to the severity of the crime, he is duty bound to reduce the sentence to one that would not be constitutionally excessive. However, the holding in **Dorthey** was made only after, and in light of, express recognition by the court that the determination and definition of acts that are punishable as crimes is purely a legislative function. It is the legislature's prerogative to determine the length of the sentence imposed for crimes classified as felonies. Moreover, courts are charged with applying these punishments unless they are found to be unconstitutional. **Dorthey**, 623 So.2d at 1278.

In **State v. Johnson**, 97-1906 (La. 3/4/98), 709 So.2d 672, 676, the Louisiana Supreme Court reexamined the issue of when **Dorthey** permits a downward departure from a mandatory minimum sentence. The court held that to rebut the presumption that the mandatory minimum sentence was constitutional, the defendant had to "clearly and convincingly" show that:

[he] is exceptional, which in this context means that because of unusual circumstances this defendant is a victim of the legislature's failure to assign sentences that are meaningfully tailored to the culpability of the offender, the gravity of the offense, and the circumstances of the case.

**Johnson**, 709 So.2d at 676. A trial judge may not rely solely upon the nonviolent nature of a crime before the court or of past crimes as evidence that justifies rebutting the presumption of constitutionality. **Johnson**, 709 So.2d at 676.

As conceded by the defendant, based on his instant and predicate convictions, he was subject to mandatory life sentences as a fourth-felony habitual offender on count one under La. R.S. 15:529.1(A)(4)(b) and as a third-felony offender on count two under La. R.S. 15:529.1(A)(3)(b). Specifically, count one

consists of a crime of violence, and count two is a crime punishable by imprisonment for twelve years or more. See La. R.S. 14:2(B)(39); La. R.S. 14:95.1(B). Moreover, two of the defendant's prior felonies that were used to enhance both counts, possession with intent to distribute marijuana and distribution of cocaine, are violations of the Uniform Controlled Dangerous Substances Law punishable by imprisonment for ten years or more. See La. R.S. 40:966(B)(3); La. R.S. 40:967(B)(4)(b).

The Louisiana Supreme Court has cautioned that downward departures from mandatory minimum sentences should only be made in rare cases. **State v. Lindsey**, 99-3302, 99-3256 (La. 10/17/00), 770 So.2d 339, 343, cert. denied, 532 U.S. 1010, 121 S.Ct. 1739, 149 L.Ed.2d 663 (2001). In this case, the defendant has not presented any particular or special circumstances that would support a deviation from the mandatory life sentences provided in La. R.S. 15:529.1. The defendant has a lengthy criminal history which includes drug offenses involving not only the possession, but also the distribution of drugs, weapon offenses, and a crime of violence (the instant offense on count one) that involved potential endangerment to the lives of several people. As noted by the trial court, the defendant did not take advantage of multiple opportunities for rehabilitation. Thus, we find that the defendant in this case has not met his burden of rebutting the presumption of constitutionality. Based on the record before us, the defendant is not the type of offender contemplated by the Louisiana Supreme Court in **Dorthey and Johnson**, warranting a downward deviation from the mandatory sentence. Thus, assignment of error number one lacks merit.

#### CONCLUSION

For all of the foregoing reasons, we affirm the convictions, habitual offender adjudications, and sentences of the defendant, Miguel Theriot.

**CONVICTIONS, HABITUAL OFFENDER ADJUDICATIONS, AND SENTENCES AFFIRMED.**