

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2015 KA 0952

STATE OF LOUISIANA

VERSUS

SCOTT BROWN

**Judgment rendered December 23, 2015.**

\* \* \* \* \*

Appealed from the  
17th Judicial District Court  
in and for the Parish of Lafourche, Louisiana  
Trial Court No. 532062  
Honorable F. Hugh Larose, Judge

\* \* \* \* \*

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SCOTT BROWN

\* \* \* \* \*

**BEFORE: PETTIGREW, HIGGINBOTHAM, AND CRAIN, JJ.**

**PETTIGREW, J.**

The defendant, Scott Brown, was charged by bill of information with simple burglary, in violation of La. R.S. 14:62 and pled not guilty. The defendant waived his right to a trial by jury, and was found guilty as charged after a bench trial. The trial court denied the defendant's motion for a new trial. The trial court sentenced the defendant to ten years imprisonment at hard labor, and subsequently denied the defendant's motion to reconsider sentence. The defendant now appeals, assigning error to the constitutionality of the sentence. For the following reasons, we affirm the conviction and sentence.

**STATEMENT OF FACTS**

On June 15, 2014, officers of the Thibodaux Police Department (TPD) were notified of a burglary of a 2011 Toyota Camry owned by resident Dawn Stilling at 1301 Ledet Street in Thibodaux. Coby Cancienne, Stilling's step-cousin and next-door neighbor, was walking to his vehicle at approximately 8:25 p.m., when he observed an African-American male under Stilling's carport. The carport light was on at the time. Cancienne was planning to attend a 9:00 p.m. church service with his girlfriend (Dawn Stilling's stepdaughter), who was at the Stilling residence at the time. Cancienne proceeded to enter his vehicle, back out of his driveway and, wait for his girlfriend. While waiting on the street, he observed the perpetrator enter the passenger door of Stilling's vehicle. After Cancienne pulled into Stilling's driveway, the perpetrator got out of the car, dropping some compact discs on the ground as he quickly walked through a vacant lot between the houses.

Cancienne flagged down the passing police unit of TPD Officer Rebecca Shaver, who was on patrol responding to another complaint in the area. After reporting his observations to Officer Shaver, Cancienne notified Stilling. Other TPD officers received radio notification, responded to the scene, and lifted fingerprints from Stilling's vehicle. Stilling assessed her vehicle, noting that her Garmin GPS system and car keys had been stolen and that her compact discs were on the ground. Stilling's uncle found her keys in the empty lot between her and Cancienne's residences. Stilling did not know the

defendant and did not give him permission to enter her vehicle and take her belongings.

That same night, June 15, 2014, within roughly thirty minutes of the vehicle burglary at the Stilling residence, Andrew Robichaux, a resident of 1333 Ledet Street, who knew the defendant and often saw him in the neighborhood, confronted the defendant after he was seen exiting a Dodge Caravan that was parked in Robichaux's driveway. Robichaux was a part-time auto mechanic, and the vehicle was at his residence at the time to be repaired. Robichaux's driveway was well lit by his security lights. Robichaux confronted the defendant and asked why he was in the vehicle. The defendant responded, "Man, you know me, you know me," and fled down the street as Robichaux chased him behind a trailer. As the defendant escaped, Robichaux saw police lights in the area, and relayed the incident to the police, who were investigating the Stilling incident. The next day, Robichaux identified the defendant in a photographic lineup.

At the trial, Stilling identified her GPS, which was located in Robichaux's backyard a couple of days after the burglaries. TPD Detective Bradley Troclair and Lafourche Parish Sheriff's Office Detective Robert Mason (an expert in fingerprint analysis) performed the fingerprint comparison of the fingerprints collected from Stilling's vehicle with the defendant's. They concluded that one of the latent fingerprints matched the known fingerprint of the defendant. The defendant, who testified at the trial, denied committing the burglaries, being in the area, or knowing Robichaux.

### **ASSIGNMENT OF ERROR**

In the sole assignment of error, the defendant argues that the trial court abused its discretion under the circumstances of this case by imposing a constitutionally excessive sentence. The defendant specifically contends that the sentence is disproportionate to the acts constituting the crime in this case. The defendant notes that according to the evidence, he entered two vehicles without damaging them, rummaged through some compact discs, and took two items, a set of keys and a GPS device. The defendant notes that the trial court did not order a presentence

investigation (PSI) and contends that the trial court failed to consider his personal history including his age, mental status, dependents, family ties, employment record, health, and the potential for rehabilitation. Thus, the defendant argues that the trial court should have granted his motion to reconsider sentence.

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 may fall within statutory limits, it may nevertheless violate a defendant's constitutional right against excessive punishment and is subject to appellate review. **State v. Sepulvado**, 367 So.2d 762, 767 (La. 1979). 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 caused to society, it is so disproportionate as to shock one's sense of justice. **State v. Reed**, 409 So.2d 266, 267 (La. 1982).

The Code of Criminal Procedure sets forth, in Article 894.1, items that must be considered by the trial court before imposing sentence. The trial court need not recite the entire checklist of factors, but the record must reflect that it adequately considered the guidelines. 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. Lanclos**, 419 So.2d 475, 478 (La. 1982). See also **State v. Savario**, 97-2614, p. 8 (La. App. 1 Cir. 11/6/98), 721 So.2d 1084, 1089, writ denied, 98-3032 (La. 4/1/99), 741 So.2d 1280.

At the outset we note the defendant did not object to being sentenced without the judge first ordering a PSI report. Further, in his motion to reconsider sentence, the defendant did not raise the issue of the trial judge's failure to order a PSI report. Thus, La. Code Crim. P. arts. 841 and 881.1(E) preclude the defendant from raising this issue on appeal. Moreover, as conceded by the defendant, there is no mandate that a PSI report be ordered, and the trial court's failure to order a PSI report will not be reversed absent an abuse of discretion. See La. Code Crim. P. art. 875(A)(1); **State v.**

**Wimberly**, 618 So.2d 908, 914 (La. App. 1 Cir.), writ denied, 624 So.2d 1229 (La. 1993).

Whoever commits the crime of simple burglary shall be fined not more than two thousand dollars, imprisoned with or without hard labor for not more than twelve years, or both. La. R.S. 14:62(B). As noted, the defendant was sentenced to ten years imprisonment at hard labor, without the imposition of a fine.

Before imposing the sentence, the trial court noted that the defendant was granted leniency in that he was only charged with one count of simple burglary though he burglarized at least two vehicles that night. The trial court noted that the defendant's criminal record included felony theft convictions in 1978, 1982, 1984, 2009, and 2013, a simple burglary conviction in 1996, a battery of a police officer conviction in 2007, an attempted theft conviction in 2008, and a trespassing conviction in 2012. The trial court further took note of the defendant's several misdemeanor convictions, and noted that the instant offense was committed within six days of the defendant's release from the department of corrections for a prior felony conviction.

The trial court noted that the defendant has failed to demonstrate the ability or willingness to abide by basic societal rules in continuing to commit thefts. The trial court further stated, "I don't find that you have ever been overtly violent towards anyone, but the complete and total disregard for the possessions and properties of others is astounding." In denying the motion to reconsider the sentence, the trial court reiterated that it tried the case and listened to the evidence. The trial court considered the record and the defendant's extensive criminal record, noting the multiplicity of similar offenses and the commission of about a dozen misdemeanor offenses.

A thorough review of the record reveals the trial court did not manifestly abuse its discretion in imposing the sentence. The trial court adequately considered the facts and circumstances of the case and the defendant's extensive criminal record. We find that the record supports the sentence imposed herein.

The imposed sentence is not grossly disproportionate to the severity of the offense, and thus, is not unconstitutionally excessive. The sole assignment of error is without merit.

**CONVICTION AND SENTENCE AFFIRMED.**