NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	**NO. 2003-KA-1058**
VERSUS	*	**COURT OF APPEAL**
ANGELA P. ODUM	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
	*	

* * * * * * *

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 430-577, SECTION "F"
Honorable Dennis J. Waldron, Judge
* * * * * *
Judge Edwin A. Lombard
* * * * * *

(Court composed of Judge James F. McKay III, Judge Max N. Tobias Jr., Judge Edwin A. Lombard)

Eddie J. Jordan, Jr.
District Attorney
Claire Adriana White
Assistant District Attorney
619 South White Street
New Orleans, LA 70119

COUNSEL FOR PLAINTIFF/APPELLEE

Karen G. Arena

LOUISIANA APPELLATE PROJECT
110 Veterans Memorial Blvd.
Suite 222
Metairie, LA 70005

COUNSEL FOR DEFENDANT/APPELLANT

AFFIRMED

The defendant-appellant, Angela Odum, appeals her conviction and sentence for one count of simple burglary of an inhabited dwelling in violation of La. Rev. Stat. 14:62.2. After review of the relevant facts in light of the relevant law and arguments of the parties, we affirm defendant's conviction and sentence.

Relevant Facts

On May 29, 2003, defendant Angela Odum was charged bill of information with one count of simple burglary of an inhabited dwelling in violation of La. Rev. Stat.14:62.2. The defendant pleaded not guilty at her May 31, 2002, arraignment. At her trial in August 2002, the following evidence was adduced.

On March 31, 2002, Jason Kopacka was walking to his residence at 3814 Laurel Street when he heard the burglar alarm coming from the residence at 3813 Laurel Street. Immediately after hearing the alarm, Mr. Kopacka saw the defendant exiting the rear of the residence at 3813 Laurel

Street. The defendant asked Mr. Kopacka if he knew the residents at 3813 and suggested Mr. Kopacka call the police. Mr. Kopacka dialed 911 as the defendant left the scene.

Gavin McArthur and Allison Alsoup, the residents of 3813 Laurel Street, testified that on March 31, 2002, when they returned home they discovered that their home had been burglarized, the glass in the French door in their bedroom had been broken, and their home had been ransacked. The couple testified that they had encountered the defendant on two prior occasions. First, the couple awoke in the early morning hours of Thanksgiving Day to find the defendant looking into their bedroom window and, when Mr. McArthur questioned the defendant, she attempted to sell him a computer. The victims again woke in the early morning hours of March 31, 2002, the day of the burglary, to find the defendant looking into their window. The defendant entered the room through an unlocked French door wearing a white t-shirt and orange colored pants, the same clothing she was wearing when apprehended by a police officer later that day after the burglary.

Sergeant Karim Brink, of the New Orleans Police Department, testified that upon arriving on the scene, he received a description of the defendant from Mr. Kopacka and the victims of the burglary, Ms. Alsoup

and Mr. McArthur. After searching the neighborhood, Sgt. Brink saw the defendant walking in the area, stopped his vehicle near the defendant, and then approached her. The defendant appeared extremely nervous and reluctantly complied with Sgt. Brink's request to stop walking. When told by the officer to place her hands on the hood of his vehicle, the defendant was again reluctant in complying with the officer's demands and when Sgt. Brink attempted to handcuff her the defendant broke free and began to run. Sgt. Brink pursued the defendant on foot and observed the defendant discard an object as she was running which was later identified as a watch belonging to Ms. Alsoup. The defendant was apprehended shortly thereafter and returned to the scene where she was positively identified by Mr. Kopacka, Ms. Alsoup, and Mr. McArthur.

On August 13, 2002, a twelve-person jury found the defendant guilty as charged. On August 20, 2002, the state filed a multiple bill alleging the defendant to be a fourth offender. On October 16, 2002, the defendant was adjudged a fourth offender. On January 23, 2003, the defendant was sentenced to twenty years without the benefit of probation or suspension of sentence. On that same date, the trial court denied the defendant's motion to reconsider the sentence and granted the defendant's notice of appeal.

Error Patent Review

A review of the record revealed that the trial court imposed the defendant's twenty-year sentence for simple burglary of an inhabited dwelling without the benefit of probation or suspension of sentence but failed to impose the sentence without the benefit of parole. Pursuant to La. R.S. 15:301.1(A) in instances where the statutory restriction is not recited at sentencing, it is included in the sentence given, regardless of whether or not imposed by the sentencing court. *See State v. Williams*, 2000-1725 (La. 11/28/01), 800 So.2d 790 (section A of the statute self-activates the correction and eliminates the need to remand for a ministerial correction of an illegally lenient sentence, which may result from the failure of the sentencing court to impose punishment in conformity with that provided in the statute). Accordingly, we need take no action to correct the trial court's failure to specify that the defendant's sentence be served without benefit of parole as well as without benefit of probation or suspension of sentence because the correction is statutorily effected. La. Rev. Stat. 15:301.1(A).

Assignment of Error No. 1

First, the defendant contends that the evidence is insufficient to support her conviction for simple burglary of an inhabited dwelling. The standard for reviewing a claim of insufficient evidence is whether, after

viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found all of the essential elements of the offense proven beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307. (1979). The reviewing court is to consider the record as a whole and not just evidence most favorable to the prosecution; and if rational triers of fact could disagree as to the interpretation of the evidence, the rational decision to convict should be upheld. *State v. Mussall*, 523 So.2d 1305 (La. 1988). Additionally, the reviewing court is not called upon to decide whether it believes the witnesses or whether the conviction is contrary to the weight of the evidence. *Id*. The trier of fact's determination of credibility is not to be disturbed on appeal absent an abuse of discretion. *State v. Cashen*, 544 So.2d 1268 (La. App. 4 Cir. 1989).

When circumstantial evidence forms the basis for the conviction, such evidence must exclude every reasonable hypothesis of innocence. La. Rev. Stat. 15:438. The court does not determine whether another possible hypothesis suggested by the defendant could afford an exculpatory explanation of the events. Rather, this court when evaluating the evidence in the light most favorable to the prosecution, must determine whether the possible alternative hypothesis is sufficiently reasonable that a rational juror could not have found proof of guilt beyond a reasonable doubt under

Jackson. *State v. Davis*, 92-1623 (La. 5/23/94), 637 So.2d 1012. This is not a separate test from *Jackson*, but is instead an evidentiary guideline for the jury when considering circumstantial evidence, and this test facilitates appellate review of whether a rational juror could have found the defendant guilty beyond a reasonable doubt. *State v. Wright*, 445 So.2d 1198 (La. 1984).

La. Rev. Stat. 14:62.2 provides in pertinent part:

> Simple burglary of an inhabited home is the unauthorized entry of any inhabited dwelling, house, apartment or other structure used in whole or in part as a home or place of abode by a person or persons with the intent to commit a felony or any theft therein, other than as set forth in Article 60.

Specific criminal intent, an essential element of the crime of simple burglary of an inhabited dwelling, is that state of mind that exists when the circumstances indicate that the offender actively desired the prescribed criminal consequences to follow from his act or failure to act. *State v. Chairs*, 99-2908, p.8 (La. App. 4 Cir. 2/7/01), 780 So.2d 1088, 1093. Accordingly, the state must prove the defendant made an unauthorized entry into an inhabited dwelling or apartment with the intent to commit a felony or theft therein. *State v. Scott*, 593 So.2d 704 (La. App. 4 Cir. 1991).

The defendant contends that the evidence is insufficient to support her conviction for simple burglary because no witness actually saw her

burglarize the home, no items from the burglary were found on her person, no fingerprints were taken from the residence which tied the defendant to the crime scene, and there were inconsistencies in the witnesses' testimony as the time it took for the police officer to arrive on the scene and apprehend the defendant, whether an empty beer can was found inside or outside of the burglarized residence, and the defendant's actual height.

The reviewing court must defer to the fact finder's credibility choices and justifiable inferences of fact. *State v. Lee*, 94-2584, p. 7 (La. App. 4 Cir. 1/19/96), 668 So.2d 420, 426. It is not the function of a reviewing court to assess credibility or to reweigh the evidence. *State v. Rosiere*, 488 So.2d 965, 968 (La. 1986). The credibility determination is within the sound discretion of the trier of fact and will not be disturbed unless clearly contrary to the evidence. *State v. Vessell*, 450 So.2d 938, 943 (La. 1984); *State v. Jones*, 537 So.2d 1244, 1249 (La. App. 4 Cir. 1989). Credibility is reviewed on an abuse of discretion standard. *State v. Cashen*, 544 So.2d 1268 (La. App. 4 Cir. 1989).

After reviewing all the record evidence in the light most favorable to the prosecution, we find that a rational trier of fact could have found all of the essential elements of the offense proven beyond a reasonable doubt. The defendant, who had entered the victim's home without invitation earlier on

the day of the burglary, was seen leaving the residence shortly after the burglar alarm was triggered and discarded the watch belonging to the victim while attempting to evade the police. She was identified by the victims as their early morning uninvited visitor and the neighbor as the woman exiting the residence to the accompanying sounds of the burglar alarm.

The minor inconsistencies in the testimony of the witnesses are inconsequential. The jury heard the testimony of all the witnesses and obviously found it to be compelling and credible. This determination is not contrary to the evidence and we do not find that the jury abused its discretion in finding the state's witnesses credible. Accordingly, this assignment of error is without merit.

Assignment of Error No. 2

The defendant argues that the trial court erred in declining to declare a mistrial when the state referred to inadmissible other crimes evidence during trial and closing arguments. Mistrial is a drastic remedy that is only authorized where substantial prejudice will otherwise result to the defendant. *State v. Allen*, 94-1895, p.9 (La. App. 4 Cir. 9/15/95), 661 So.2d 1078, 1085. The determination of whether prejudice has resulted lies within the sound discretion of the trial court. *State v. Banks*, 96-2227, p.2 (La. 4/18/97), 692 So.2d 1051, 1053.

The defendant complains of two specific incidents that occurred during the course of the trial. The first instance complained of by the defendant occurred during the testimony of Sgt. Karim Brink when the officer stated:

> Well, when I looked up, I lost sight of her at that time, she was running very fast, which I believe, because of – what I believed at the time she was really high on some type of narcotic.

The second incident occurred during closing argument by the state when the prosecutor stated:

> You know what this is, Ladies and Gentlemen? This is Angela Odum, the defendant, before you today. This woman burglarized their home so she could steal some of their things to sell to get her next fix. That's what's going on behind this story.
>
> ***
>
> So, what puts Angela Odum there? Thanksgiving morning. Easter morning, when she's inside that house.

The defendant avers the state's closing argument referred to the defendant's prior encounters with the victims as attempted burglaries intended only to poison the jury as to the defendant's character. The defendant further avers that without the references made by the state the defendant would not have been convicted because the evidence was insufficient.

In the instant case, the fact that the defendant had been to the house at 3813 Laurel Street on two prior occasions before she committed the simple burglary in this case was deemed admissible by the trial court for the purpose of identity as allowed by La. Code of Evidence art. 404 (B). Additionally, as shown in the prior assignment of error the evidence against the defendant was sufficient to convict the defendant. Therefore, the defendant has failed to show that she was prejudiced by the comments.

As for the comment by Sgt. Brink, at the time it was made defendant's trial counsel raised an objection that was sustained by the trial court. Defendant's trial counsel did not ask for a mistrial, however, and the failure to request an admonition or mistrial when entering an objection fails to preserve the issue for appellate review. *State v. Bentley*, 02-1564, p. 4 (La. App. 4 Cir. 3/12/03), 844 So.2d 149, 152.

Accordingly, after review of the defendant's arguments in light of the record and the applicable law, we do not find that, in denying a mistrial, the trial judge abused his discretion. Accordingly, this assignment of error is without merit.

Assignment of Error No. 3

Finally, the defendant contends that her twenty-year sentence for simple burglary is excessive. A sentence within the statutory limits may still

violate a defendant's constitutional right against excessive punishment. *State v. Sepulvado*, 367 So.2d 762 (La. 1979). A sentence is unconstitutionally excessive if it makes no measurable contribution to acceptable goals of punishment, is nothing more than the needless and purposeless imposition of pain and suffering and is grossly out of proportion to the severity of the crime. *State v. Labato*, 603 So.2d 739 (La. 1992).

Generally, a reviewing court must determine whether the trial judge adequately complied with the sentencing guidelines set forth in La. Code Crim. Proc. art. 894.1 and whether the sentence is warranted in light of the particular circumstances of the case. *State v. Soco*, 441 So.2d 719 (La. 1983). If adequate compliance with Article 894.1 is found, the reviewing court must determine whether the sentence imposed is too severe in light of the particular defendant and the circumstances of his case, keeping in mind that maximum sentences should be reserved for the most egregious violators of the offense so charged. *State v. Quebedeaux*, 424 So.2d 1009 (La. 1982).

The trial judge is given wide discretion in imposing a sentence, and a sentence imposed within the statutory limits will not be deemed excessive in the absence of manifest abuse of discretion. *State v. Walker*, 96-112, p. 4 (La. App. 3 Cir. 6/5/96), 677 So.2d 532, 535, citing *State v. Howard*, 414 So.2d 1210 (La. 1982).

In the instant case, the defendant was sentenced to the statutory minimum of twenty years for a fourth offender. The trial judge took into consideration the defendant's extensive arrest record with offenses dating back to 1977 when the defendant was a juvenile. The Habitual Offender Law is constitutional and therefore, the minimum sentences the statute imposes upon multiple offenders are presumed to be constitutional, and should be accorded great deference by the judiciary. *State v. Brown*, 02-1057, p. 5 (La. App. 4 Cir. 6/19/02), 821 So.2d 751, 754 (citations omitted). To rebut the presumption that the mandatory minimum sentence is constitutional, the defendant must clearly and convincingly show that she 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. *Id.*

The defendant has failed to show that she is exceptional and her circumstances are unusual. Accordingly, we do not find that the trial judge abused his discretion in sentencing the defendant to the minimum sentence accorded a defendant convicted of a fourth felony under the Habitual Offender Law. This assignment of error is without merit.

Conclusion

For the foregoing reasons, the defendant’s conviction and sentence is affirmed.

AFFIRMED.