STATE OF LOUISIANA	*	**NO. 2004-KA-0182**
VERSUS	*	**COURT OF APPEAL**
CHARLES J. GRIFFIN	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 436-232, SECTION "G"
HONORABLE JULIAN A. PARKER, JUDGE
* * * * * *

JUDGE MICHAEL E. KIRBY

* * * * * *

(Court composed of Chief Judge Joan Bernard Armstrong, Judge Michael E. Kirby, Judge Max N. Tobias Jr.)

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STATEMENT OF THE CASE

On January 23, 2003 the State charged the defendant with one count of aggravated battery. At his arraignment on January 28 he pled not guilty to the charge. On April 10, a six-person jury found him guilty as charged. The State filed a multiple bill on May 8. The matter was reset several times, partially due to a change of counsel. On October 14, the court denied the defendant's motion for new trial. The defendant announced his readiness for sentence, and the court sentenced him to serve five years at hard labor without the benefit of probation or suspension of sentence. After a hearing on that date, the court found the defendant to be a second offender. The defendant waived all delays, and the court vacated the original sentence and sentenced him to serve five years at hard labor without benefit of suspension of sentence as a second offender. The court denied the defendant's motion to reconsider sentence and granted his motion for appeal.

FACTS

On November 22, 2002 a police officer responded to a call concerning an aggravated battery at 7311 Spring Lake Drive. Upon arrival, the officer

interviewed the defendant Charles Griffin concerning an incident involving his wife Maria Griffin which occurred two days earlier at the residence. The officer described Griffin as very aggressive during the interview. The officer testified he arrested Griffin and seized various items, including a towel with blood on it, a man's shirt with blood on it, and a knife which Maria Griffin indicated her husband used to attack her. In addition, the officer took photographs of the scene and of the victim's injuries to her hand, as well as photos of a sofa with a bloodstain in front of it, of a slash mark in a wall, and of a slashed mattress. The officer testified that the attack occurred two days prior to his arrival.

Dr. Michael Isabelle, qualified as an expert in emergency care, testified that on November 20, 2002, Maria Griffin appeared at the emergency room of Pendleton Methodist Hospital suffering from slash wounds on her right hand. Dr. Isabelle testified Ms. Griffin had a laceration to the web between her thumb and her index finger requiring eighteen stitches to close. He testified that he thought Ms. Griffin told him she had cut herself with a knife. He stated the wound was consistent with the victim having been cut with a knife, either by herself or by another person.

Monica Washington testified she worked with Ms. Griffin at the Orleans Parish Juvenile Court. She stated that on November 21, 2002, Ms.

Griffin came to work with her right hand bandaged. Ms. Washington stated she saw several cuts between Ms. Griffin's fingers, and Ms. Griffin's lip was swollen and her face was bruised.

Maria Griffin testified she had been married to the defendant Charles Griffin for six and a half years at the time of his trial. She stated she was from St. Lucia and had been in the U.S. for fifteen years. She testified that she and Griffin have a son, Christen, who was six years old at the time of trial. Ms. Griffin testified that on November 20, 2002, she was at work while her husband, who was not employed, was at home with a car at his disposal. She stated she was in a meeting that afternoon when Griffin unsuccessfully tried to call her to ask her to pick up their son from school because the son had become sick. She stated that when Griffin finally got in touch with her, she went to her son's school, picked him up, and drove home.

Ms. Griffin stated that when she arrived at home, she took her son to his room and then went into the den. She stated that Griffin appeared and began yelling at her because she had been unavailable that afternoon to take his call while she was in a meeting. She stated Griffin became more enraged and punched her. She stated he pushed her onto the sofa and began choking her. He then pulled out a knife and told her he was going to kill her and cut

her eyes and throat. She identified the knife seized from the house as the one Griffin was holding. Ms. Griffin testified she worked one hand free and raised it, and Griffin cut her hand between her fingers and on top of her hand while she tried to get the knife away from him. She stated that Griffin backed away, and she was able to break free. She testified she found a towel and wrapped it around her hand. She stated she and Griffin went to a guest bedroom, where he told her to say goodbye to their son because she was not going to see the end of the day. She testified she went to her son's room and told him that if anything happened to her, he was to call 911. She also stated she told him to stay in his room. Ms. Griffin stated that Griffin then took her out of their son's room and into their room, where he locked her in and again told her she was going to die. She testified Griffin stabbed the knife into the wall and slashed the mattress.

Ms. Griffin testified she finally convinced Griffin not to kill her, and he told her she should go to the hospital to have her hand treated. She testified Griffin got their son, and he and the son drove her to the hospital. She testified Griffin reminded her that he had their son with him, and he threatened to kill their son and himself if anyone unexpectedly showed up at their door. She stated Griffin then dropped her off at the hospital and drove away. She testified she did not remember telling the doctor who treated her

who actually caused her wounds, but she insisted she did not tell him Griffin injured her because she was afraid Griffin would harm their son.

Ms. Griffin testified she went to work the next day after persuading Griffin she was needed there. She stated that Griffin kept their son home that day and the next, and she was afraid to tell anyone what really happened to her. She testified that on Friday, November 22 she finally contacted the police because Griffin called her at work and threatened her again. She testified she told her boss, and she and her boss prepared the paperwork to get a restraining order against her husband. Ms. Griffin stated civil sheriff's deputies then went to her house to pick up her son and order Griffin to leave their residence. She testified the deputies eventually called in N.O.P.D. officers for backup.

Ms. Griffin denied seeing Griffin in the kitchen cutting up a chicken when she and their son arrived at home just prior to the slashing. She also denied she and Griffin argued in the kitchen about his threat to obtain a divorce; she insisted Griffin did not raise the subject of a divorce, nor did they discuss her citizenship. She admitted both she and Griffin had obtained restraining orders against each other a year before. She insisted she did not hold the knife that night. She stated she was right-handed.

Charles Griffin denied intentionally slashing his wife. He testified

that on November 20, 2002, he was at home conducting telephone interviews when his son's school called to inform him that his son was sick and needed to be picked up. Griffin testified he left his house in New Orleans East and tried to drive Uptown to get his son, but he got caught in traffic on the Interstate high-rise. Griffin testified he tried to call his wife at her work, but he was told she was unavailable because she was in a meeting. He then tried to call her on her cell phone, but he only reached her voice-mail. He testified he repeatedly tried to call her while sitting in traffic, and after about four tries he reached her. He testified that Ms. Griffin told him she could not get their son because someone had borrowed her car. He stated they exchanged words, and she hung up on him. He stated he then continued driving toward his son's school, and when he was still far from the school he called the school and was told that Ms. Griffin had picked up the boy. He then turned around and drove home, arriving before Ms. Griffin and their son.

Griffin testified he began de-boning a chicken to make soup for his son. He stated that when Ms. Griffin and Christen arrived, Christen sat down and talked with him for awhile, and then his son went to his room to change clothes. Ms. Griffin had gone to their room to change clothes, and when she came back out into the kitchen, Griffin told her he was tired of her

irresponsible ways. An argument ensued, and he left the kitchen to get a cigarette. He stated he went out on the front porch to smoke the cigarette, but rain was blowing onto the porch, so he reentered the house to walk to the covered patio in the back. He testified that as he walked through the kitchen on his way to the patio, he saw Ms. Griffin standing at the counter, holding the knife he had been using to de-bone the chicken. He testified he told her he was going to get a divorce. He stated she told him she would not give him a divorce, and he replied that he would get one without her agreement. Griffin stated that she then told him he could not get a divorce because it would compromise her immigration status, and then she lunged at him with the knife in her left hand. Griffin testified that when he grabbed her wrist and tried to pry her fingers from the knife, she grabbed the blade with her right hand. He stated he tried to pull the knife away, and it cut her hand. He stated she screamed, and he picked up a towel and wrapped it around her hand.

Griffin testified he told his wife she needed to go to the hospital, and she replied she could not find the keys to her car. She also indicated she could not drive his car because it had a standard transmission and her hand was injured. He testified he wrapped his son in a blanket and put him in the car, and then he drove Ms. Griffin to the hospital. After making sure she

had checked in at the emergency room, he took his son home, dressed him, and then drove back with the boy to the hospital to wait for Ms. Griffin. Griffin testified that after waiting awhile, Ms. Griffin told him to go home, and she would call him when she was ready to leave. He testified he and his son went home, and some hours later he went back and picked up his wife. He testified he dropped her off at a pharmacy to get her pain medication, and then all three went home and went to bed. Griffin testified that the next day, he kept his son home because his son indicated he still felt sick. Ms. Griffin, however, went to work. Griffin stated that on Friday, his son was still sick, so he kept him home.

Griffin denied attacking Ms. Griffin with the knife. He admitted he was not employed at the time of the incident, indicating he had recently been laid off. He also admitted to pleading guilty in the past to bigamy. He explained that he and his former wife had filed for divorce in Georgia, but they both moved from the state, and somehow the proper papers had not been filed and the divorce had not been granted. He testified that he subsequently obtained his divorce from his former wife and remarried Ms. Griffin.

DISCUSSION

A. Errors Patent

A review of the record reveals no patent errors.

B. Assignments of Error

Assignment of Error 1.

By both counsel's and the appellant's pro se first assignments of error, he contends there was insufficient evidence to support his conviction. Specifically, both allege the appellant's testimony was more consistent with that of the emergency room physician than was that of the victim and her friend as to the type of injuries she received, and thus his testimony is more credible than the victim's testimony. In addition, the appellant pro se points to alleged problems with the testimony of the officer who responded to the call, took photographs, and seized evidence two days after the incident.

The test for determining the sufficiency of evidence to support a conviction was set forth in State v. Armstead, 2002-1030, pp. 5-6 (La. App. 4 Cir. 11/6/02), 832 So. 2d 389, 393, writ den. 2002-3017 (La. 4/21/03), 841 So. 2d 791:

> In evaluating whether evidence is constitutionally sufficient to support a conviction, an appellate court must determine whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the defendant guilty beyond a reasonable doubt. *Jackson v. Virginia,* 443 U.S. 307, 99 S.Ct.

2781, 61 L.Ed.2d 560 (1979); *State v. Green,* 588 So.2d 757 (La.App. 4 Cir.1991). However, the reviewing court may not disregard this duty simply because the record contains evidence that tends to support each fact necessary to constitute the crime. *State v. Mussall,* 523 So.2d 1305 La.1988). The reviewing court is not permitted to consider just the evidence most favorable to the prosecution but must consider the record as a whole since that is what a rational trier of fact would do. If rational triers of fact could disagree as to the interpretation of the evidence, the rational trier's view of all the evidence most favorable to the prosecution must be adopted. The fact finder's discretion will be impinged upon only to the extent necessary to guarantee the fundamental protection of due process of law. *Mussall,* 523 So.2d 1305; *Green,* 588 So.2d 757. "[A] 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." *State v. Smith,* 600 So.2d 1319, 1324 (La.1992).

In addition, when circumstantial evidence forms the basis of the conviction, such evidence must consist of proof of collateral facts and circumstances from which the existence of the main fact may be inferred according to reason and common experience. *State v. Shapiro,* 431 So.2d 372 (La.1982). The elements must be proven such that every reasonable hypothesis of innocence is excluded. La. R.S. 15:438. This is not a separate test from *Jackson,* but rather is an evidentiary guideline to facilitate appellate review of whether a rational juror could have found a defendant guilty beyond a reasonable doubt. *State v. Wright,* 445 So.2d 1198 (La.1984). All evidence, direct and circumstantial, must meet the *Jackson* reasonable doubt standard. *State v. Jacobs,* 504 So.2d 817 (La.1987).

The appellant was convicted of aggravated battery, the elements of which were discussed by this court in State v. Wix, 2002-1493, p. 10 (La. App. 4 Cir. 1/15/03), 838 So. 2d 41, 47, writ den. 2003-0678 (La. 10/17/03), 855 So. 2d 756:

* * *

> To support a conviction of aggravated battery the State has the burden to prove three elements: (1) that the defendant intentionally used force or violence against the victim, (2) that the force or violence was inflicted with a dangerous weapon, and (3) that the dangerous weapon was used in a manner likely to cause death or great bodily harm. *State v. Rainey*, 98-436 (La. App. 5 Cir. 11/25/98), 722 So.2d 1097, 1102.

Here, the appellant argues his conviction cannot stand because the victin's testimony and that of her coworker as to the victim's injuries varied from that of the emergency room physician. He contends, however, that his own account of how the victim received her injuries matched that of the physician. Thus, he concludes, the victim's testimony was not credible. It is true that the emergency room physician testified only as to the cut between the victim's fingers; he did not mention any other cuts to her hand or any injuries to the victim's face. It is also true that the physician testified that it was his impression that the victim told him she cut herself with the knife. However, the victim testified that she did not remember the physician asking

how she cut herself, and that in any event she would not have told anyone at the hospital that the appellant had cut her because her son was with the appellant who had threatened to kill him and himself if anyone unexpectedly appeared at their residence.

The appellant does not mention, however, that his own testimony is not consistent with the physical evidence. According to the appellant, the injury occurred as he and the victim wrestled over the knife while scuffling in the kitchen. His testimony did not indicate that he and his wife were in the den or in the bedroom with the knife. By contrast, the victim testified her injury occurred after he had pushed her onto the sofa in the den, and she further testified the appellant slashed the bedroom wall and the mattress with the knife before taking her to the hospital. The State introduced photographs from the residence showing a blood stain on the carpet in front of the sofa in the den and showing a gash in the bedroom wall and in the mattress.

The appellant argues the jury should not have believed the testimony of the officer who responded to the call, photographed the scene, and seized evidence because his testimony was somewhat confusing as to what time and at what address he responded and his testimony varied somewhat from the police report. However, as the police report was not introduced into evidence, this court cannot compare it to the officer's testimony.

The jury heard the testimony of the appellant, the victim, and the officer, and it apparently chose to credit that of the victim over that of the appellant. A factfinder's credibility decision should not be disturbed unless it is clearly contrary to the evidence. State v. Huckabay, 2000-1082 (La. App. 4 Cir. 2/6/02), 809 So. 2d 1093, writ den. 2002-0703 (La. 11/1/02), 828 So. 2d 564; State v. Harris, 99-3147 (La. App. 4 Cir. 5/31/00), 765 So. 2d 432. The jury was able to observe the demeanor of all witnesses and apparently found the victim more credible than the appellant. Contrary to the appellant's argument, the victim's testimony was not so suspect as to render it invalid. Viewing the evidence in the light most favorable to the prosecution, the jury could have easily found the appellant committed a battery on the victim while armed with a dangerous weapon used in a manner intended to likely to cause death or great bodily harm. As such, the evidence was sufficient to support the appellant's conviction.

This assignment of error is without merit.

Assignment of Error 2.

By his second assignment of error, the appellant through counsel contends the trial court imposed an excessive sentence. He acknowledges he received the minimum sentence for aggravated battery as a second offender,

see La. R.S. 14:34; La. R.S. 15:529.1. He insists, however, that this sentence is still excessive because his prior conviction was merely a misunderstanding and the incident in this case was in reality a "marital squabble that got out of hand."

In State v. Jones, 2002-2433, pp. 10-11 (La. App. 4 Cir. 6/18/03), 850 So. 2d 782, 789-790, writ den. 2003-1987 (La. 1/16/04), 864 So. 2d 625, this court set forth the standard for reviewing a claim of excessive sentence where the trial court has imposed the minimum mandatory sentence:

> An appellate court reviews sentences for constitutional excessiveness under La. Const. Art. I,§20. A sentence is constitutionally excessive it if makes no measurable contribution to acceptable goals of punishment or is the purposeless imposition of pain and suffering and is grossly out of proportion to the severity of the crime. Courts have the power to declare a sentence excessive even if it falls within the statutory limits. *State v. Sepulvado*, 367 So.2d 762 (La. 1979). The trial court has the authority to reduce a mandatory minimum sentence provided by the multiple offender statute for a particular offense and offender if the sentence would be constitutionally excessive. *State v. Pollard*, 93-0660 (La. 10/20/94), 644 So.2d 370. Because the Habitual Offender Law has been held constitutional, the minimum sentences it imposes upon multiple offenders are presumed to be constitutional. *State v. Johnson*, 97-1906 (La. 3/4/98), 709 So.2d 672. To rebut the presumption of constitutionality, the defendant must clearly and convincingly show that he is exceptional in that, because of unusual circumstances, the 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. *State v. Young*, 94-1636 (La. App. 4 Cir. 10/26/95), 663 So.2d 525, 531.

The appellant argues that the minimum sentence in this case is excessive because his prior conviction was for bigamy, which he explained at trial in this case was caused by a misunderstanding on his part as to whether the proper paperwork for his divorce had been filed. He insists the present offense was merely a marital misunderstanding gone wrong. However, the presentence investigation report, which the court ordered and considered prior to imposing sentence, indicates that the appellant has prior convictions for aggravated assault in 1983 and for another assault in Pennsylvania in 1990, as well as an arrest for battery and disturbing the peace in 1985. More telling, however, is his January, 2003 arrest for domestic violence, extortion, violation of a protective order, and stalking of the victim in this case, as a result of which he pled guilty in April, 2003 in municipal court to stalking.

As set forth in Jones and Johnson (cited in Jones), the defendant carries the burden at sentencing of showing the mandatory minimum sentence is excessive in his case. Here, counsel argued the appellant's case so successfully that the court imposed a lesser sentence than it was originally going to give the appellant. Indeed, the court went on at some length about

what it considered to be the appellant's disingenuous attempt to convince the court that the prior bigamy charge had been expunged, but the court insisted it was not going to penalize the appellant for his dishonesty. Given all these factors, the appellant did not meet his burden of showing the minimum sentence in this case was excessive.

This assignment has no merit.

Assignment of Error 3.

The appellant pro se argues the court failed to properly instruct the jury on the charge against him, the lesser and included offenses to the charged crime, and on self-defense. The transcript of trial, however, indicates there were no objections to the instructions the court gave to the jurors. Thus, any error has not been preserved for appeal. See La. C.Cr.P. art. 841.

Assignment of Error 4.

By his next pro se assignment, the appellant contends his trial counsel was ineffective. He points to failures on his counsel's part both at trial and before trial to argue he is entitled to a new trial.

In State v. Mims, 97-1500, pp. 44-45 (La. App. 4 Cir. 6/21/00), 769

So. 2d 44, 72, this court discussed the standard to be used to evaluate an effective assistance of counsel claim:

> Generally, the issue of ineffective assistance of counsel is more properly addressed in an application for post-conviction relief filed in the trial court, where a full evidentiary hearing can be conducted. *State v. Smith*, 97-2221, p. 14 (La. App. 4 Cir. 4/7/99), 734 So.2d 826, 834, *writ denied*, 99-1128 (La. 10/1/99), 747 So.2d 1138. Only if the record discloses sufficient evidence to rule on the merits of the claim does the interest of judicial economy justify consideration of the issues on appeal. Id. Here, however, we believe the record is sufficient to address defendant's claims, which are essentially evidentiary.
>
> The defendant's claim of ineffective assistance of counsel is to be assessed by the two-part test announced in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984). *See State v. Fuller*, 454 So.2d 119 (La.1984). The defendant must show that his counsel's performance was deficient and that this deficiency prejudiced him. The defendant must make both showings to prove counsel was so ineffective as to require reversal. *State v. Sparrow*, 612 So.2d 191, 199 (La.App. 4 Cir.1992). Counsel's performance is not ineffective unless it can be shown that he or she made errors so serious that he or she was not functioning as the "counsel" guaranteed to the defendant by the 6th Amendment of the federal constitution. *Strickland, supra,* at 686, 2064. That is, counsel's deficient performance will only be considered to have prejudiced the defendant if the defendant shows that the errors were so serious that he was deprived of a fair trial. To carry his burden, the defendant "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding

> would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* at 693, 2068.

See also State v. Crawford, 2002-2048 (La. App. 4 Cir. 2/12/03), 848 So. 2d 615, writ den. 2003-1085 (La. 3/12/04), 869 So. 2d 815.

Here, due to the nature of the “errors” of counsel to which the appellant points, his claim of ineffective assistance of counsel cannot be addressed on appeal. He argues that he told counsel about the victim’s continued threatening acts against him both before and at the time of this incident and about the restraining order he obtained to keep the victim away from him. He states that counsel told him he could find no evidence of this retraining order or of any police report concerning the victim’s acts against the appellant, but he insists that had counsel fully investigated the matter, he could have found ample evidence of the victim’s acts and could have used this evidence to impeach her credibility. It must be noted that counsel elicited evidence from the victim of the mutual restraining orders between the victim and the appellant. The appellant points out that counsel filed no pretrial discovery motions and did not view the photographs of the scene or learn of the State’s intention to have Ms. Washington testify. The record before this court, however, is inadequate to address these claims; it is unknown what defense counsel knew prior to trial or what steps he actually

took in preparation for the appellant's trial. Therefore, we decline to address these claims in this appeal, reserving to the appellant the right to raise them in an application for post-conviction relief filed in the trial court where a hearing could be held to develop the claim.

Likewise, the appellant's remaining claim of ineffective assistance of counsel cannot be addressed in this appeal. The appellant argues counsel was ineffective for failing to object to errors alleged in the preceding assignment of error pertaining to the jury instructions. The appeal record does not contain the jury instructions, merely a notation that there were no objections to the instructions. Thus, it is unclear exactly what the court told the jurors, and this court cannot determine if the instructions were improper. The appellant may raise this claim in an application for post-conviction relief.

Assignment of Error 5.

By his final pro se assignment of error, the appellant contends his adjudication and sentence as a multiple offender were unconstitutional. Specifically, he argues he could not have been adjudicated a multiple offender because his plea to the predicate offense, bigamy, was not knowingly and voluntarily given. In support, he cites this court's opinion in

State v. Griffin, 99-2025 (La. App. 4 Cir. 11/17/99), 748 So. 2d 512, where this court upheld the trial court's ruling that relieved the appellant of his duty to register as a sex offender. The appellant cites to language in the opinion which he attributes to this court, to the effect that because he was not advised of his duty to register he could not have knowingly pled guilty to the charge of bigamy. However, a reading of this court's opinion shows this language came from the trial court at the hearing on whether the appellant should be forced to register. The trial court noted it had not advised the appellant of this duty because it never occurred to the court that the sex registration provisions applied to bigamy cases. In that regard, the trial court noted that the plea could not have been knowingly entered because the appellant was not told of the duty to register when he pled guilty. The court relieved the appellant of the duty to register, and this court affirmed that ruling. Neither the trial court nor this court found that the plea itself, absent the knowledge that he had a duty to register as a sex offender, was unknowing or involuntary. The trial court's ruling and this court's affirmation of that ruling removed any involuntariness in the plea. Thus, the trial court did not err in finding the appellant to be a second offender, and his sentence as a multiple offender is not unconstitutional.

This assignment has no merit.

Accordingly, we affirm the appellant's conviction and sentence.

AFFIRMED.