NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	**NO. 2015-KA-0804**
VERSUS	*	
		COURT OF APPEAL
ROBERT TOUSSAINT	*	
		FOURTH CIRCUIT
	*	
		STATE OF LOUISIANA

* * * * * * *

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 519-157, SECTION "B"
Honorable Tracey Flemings-Davillier, Judge
* * * * * *
Judge Dennis R. Bagneris, Sr.
* * * * * *

(Court composed of Chief Judge James F. McKay, III, Judge Dennis R. Bagneris, Sr., Judge Terri F. Love)

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CONVICTION AND SENTENCE AFFIRMED

NOVEMBER 25, 2015

Defendant, Robert Toussaint ("Defendant"), appeals a conviction and seven year sentence for the unauthorized use of a motor vehicle, in violation of La. R.S. 14:68.4. On appeal, Defendant alleges that the trial court erred in denying the special jury instruction on the *mens rea* element of unauthorized use of a movable, and that the trial court imposed an excessive sentence. For the following reasons, we hereby affirm Defendant's conviction and sentence.

PROCEDURAL HISTORY

Defendant was charged by bill of information on December 14, 2013, with unauthorized use of a motor vehicle, in violation of La. R.S. 14:68.4. Defendant appeared for arraignment on February 10, 2014, and entered into a plea of not guilty. Thereafter, Defendant filed a motion for preliminary hearing and a motion to suppress. On July 21, 2014, the trial court denied the motion to suppress and found probable cause to substantiate the charges.

On October 29, 2014, Defendant filed a motion for a special jury instruction at to *mens rea*. On February 23, 2015, prior to trial, the trial court denied Defendant's motion for special jury instruction. The matter proceeded to trial, and the jury found Defendant guilty as charged.

On March 17, 2015, Defendant filed a motion for new trial and post-verdict judgment of acquittal. On April 9, 2015, the trial court denied Defendant's motion and sentenced Defendant to seven years at the Department of Public Safety and Corrections with credit for time served. The trial court also assessed Defendant $286.50 in court costs. The same date, Defendant filed a motion for appeal, which the trial court granted.

The State subsequently filed a multiple bill of information, which has been continued several times.[1] Defendant now appeals this final judgment.

FACTS

The victim, James Cureau, and the investigating officer, Officer Rachel Dede, testified on behalf of the State.[2] The defense called no witnesses.

Cureau testified that on December 14, 2014, at approximately 12:50 a.m., he drove to a gas station on Dowman Road and Dwyer Road to purchase cigarettes. He stated that he left his keys in his car, a green Chrysler Concord, while he went inside. Once inside the store, Cureau observed a man, later identified as Defendant, enter his car and drive off. He stated that he started to call 911 but was able to flag down Off. Dede and pointed her in Defendant's direction. Cureau then noticed that Defendant had made the block and again got the officer's attention. He stated that the officer was able to stop Defendant at a gas station approximately five blocks away. Cureau identified the man in the back of the police car as Defendant.

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[1] According to Defendant, the multiple bill hearing was scheduled for October 23, 2015.

[2] Detective Sandy Gavin, an investigator with the Orleans Parish District Attorney's Office, was called to testify about the car's registration information. However, the trial court sustained Defendant's objections of hearsay, and the State had no further questions.

Cureau testified that he never met Defendant before the night of the December 14, 2014. He stated that although the incident occurred at night, the gas station was lit up and he could see Defendant's face. Cureau admitted that he had been previously convicted of possession of heroin, cocaine, and marijuana. He also admitted that he did not want to testify at trial, and a material witness bond had to be issued.[3] Cureau stated that his story has not changed since his original statement, and the State has not given him any incentive to testify.

On cross-examination, Cureau testified in addition to drug possession charges he had a domestic abuse conviction, and as part of his probation, he had to get treatment at Odyssey House. He stated that he is familiar with Club 7140 on Dowman Road in New Orleans East, but has not visited the establishment. Cureau denied lending Defendant the car for cash or marijuana the night of the incident so that Defendant could go to Waffle House. He denied going to Club 7140 on December 13, 2014. Cureau admitted that the gas station where the car was stolen is across the street from Club 7140. He admitted that the car doors were unlocked and the keys were left in the ignition. Cureau testified that after he got the car back, the ignition was not damaged; no windows were broken; and the steering column had not been damaged.

Off. Dede testified she was driving down Dowman Road when Cureau flagged her down. She proceeded north down the street as Cureau directed her, but saw in her rearview mirror Cureau waving again and observed that Defendant had "made the block and was traveling in the other direction." Off. Dede then u-turned to follow the vehicle down Dowman Road and activated her lights and siren. She stated she never lost sight of the vehicle. When the car got near Chef Menteur

[3] After being arrested for failure to appear at trial, Cureau was in jail for seven days.

Highway, it pulled into another gas station. Off. Dede ordered Defendant out of the car and informed him he was under investigation for a possible theft of a vehicle. Thereafter, Off. Dede detained Defendant and advised him of his rights. She stated that Cureau positively identified Defendant as the man who had taken his vehicle. Off. Dede stated that Cureau did not seem drunk. After running the license plate and VIN number, she was able to confirm that the stolen vehicle belonged to Cureau. She relocated to the original gas station to see if there was possible video footage, but the attendant informed her that he did not know if the cameras worked, and he did not have access to them.

On cross-examination, Off. Dede stated that she did not find a screwdriver or gloves on Defendant after his arrest. She testified that the steering column was intact and the ignition had not been manipulated. Off. Dede stated that when Cureau reported the crime, he indicated that his car was running and that his keys were left in his car. Off. Dede testified during her time as a police officer she learned of the term "rock rental," which she explained is when "someone wants drugs, and they loan out their vehicle to get drugs because they don't have money." She stated that people will lend out their car in exchange for any drug, like marijuana, and not just cocaine.

On redirect, Off. Dede stated that in her experience, she has never heard of somebody lending a car out for drugs and then immediately calling the police. She also testified that she did not find drugs on Cureau, and he did not smell like marijuana.

ERRORS PATENT

A review of the record reveals one errors patent with regard to sentencing. La. C. Cr. P. art. 873 states that if "a motion for new trial, or in arrest of judgment,

is filed, sentence shall not be imposed until at least twenty-four hours after the motion is overruled," unless the defendant "expressly waives" the delay or pleads guilty.

In the present case, the trial court sentenced Defendant the same day that it denied Defendant's motion for post-judgment verdict of acquittal and motion for new trial without an express waiver of the twenty-four hour delay required by La.C.Cr.P. art. 873.

If the defendant has not challenged his sentence, and he does not raise as appellate error the failure of the trial court to wait twenty-four hours before imposing sentence, the error is harmless. *State v. Stovall*, 07-0343, p. 12 (La. App. 4 Cir. 2/6/08), 977 So. 2d 1074, 1082 (citing *State v. Williams*, 03–0987, p. 5 (La. App. 4 Cir. 12/10/03), 863 So.2d 652, 655); see also*, State v. Williams*, 04-1139, p. 10 (La. App. 4 Cir. 4/13/05), 901 So. 2d 1171, 1177. This Court has also held that failure to observe the twenty-four hour delay provided under La. C.Cr.P. art. 873 is considered harmless error when: there is a sufficient delay between the conviction and the sentencing; there is no indication that the sentence was hurriedly imposed; and there is neither an argument nor a showing of actual prejudice by the failure to observe the twenty-four-hour delay. *Stovall*, 07–0343, p. 1, 977 So.2d at1084 (citing *State v. Foster*, 2002–0910, pp. 3–4 (La. App. 4 Cir. 12/11/02), 834 So.2d 1188, 1192).

In *State v. Wilson*, 12-1765, p. 12-13 (La. App. 4 Cir. 2/12/14), 138 So. 3d 661, 671-672, the defendant was convicted on June 13, 2013, and three weeks later, on July 5, 2012, the trial court denied a motion for new trial and sentenced the defendant. This Court noted that there was no indication that "the sentence was hurriedly imposed," and although defendant raised excessive sentence as an

assignment of error, he did not argue that he was prejudiced by the trial court's failure to observe the statutory delay. As result, this Court found that the trial court error in imposing a sentence during the twenty-four hour period after it denied the motion for new trial was harmless.

Here, similar to *Wilson*, Defendant contends the sentence the trial court imposed is unconstitutionally excessive. However, his sentencing hearing occurred on April 9, 2015, approximately six weeks after Defendant was convicted of unauthorized use of a motor vehicle on February 23, 2015; thus, the sentence was not hurriedly imposed. Additionally, like *Wilson*, he does not raise the issue the failure of the trial court to wait twenty-four hours before imposing the sentence or allege that he was prejudiced by the trial court in that regard. Accordingly, any error on part of the trial court concerning the failure to observe the twenty-four hour delay set forth in La. C.Cr.P. art. 873 is harmless.

ASSIGNMENT OF ERROR NUMBER 1

In his first assignment of error, Defendant contends that the trial court erred in "denying the special jury instruction on the *mens rea* element of unauthorized use of a movable, thereby easing the State's burden of proof, and resulting in a conviction that is not based on proof of all the elements."

Under La. C.Cr.P. art. 807, a requested special jury charge shall be given by the court if it does not require qualification, limitation or explanation, and if it is wholly correct and pertinent. The special charge need not be given if it is included in the general charge or in another special charge to be given. *State v. Tate*, 01-1658, p. 20 (La. 5/20/03), 851 So. 2d 921, 937 (citing *State v. Segers*, 355 So.2d 238, 244 (La.1978)). Failure to give a requested jury instruction constitutes reversible error only when there is a miscarriage of justice, prejudice to the

substantial rights of the accused, or a substantial violation of a constitutional or statutory right. *Tate*, 01-1658, p. 20, 851 So. 2d at 937 (citing *State v. Marse,* 365 So.2d 1319, 1323 (La.1978); La. C.Cr.P. art. 921).

La. R.S. 14:68.4(A) defines unauthorized use of a motor vehicle as "the intentional taking or use of a motor vehicle which belongs to another, either without the other's consent, or by means of fraudulent conduct, practices, or representations, but without any intention to deprive the other of the motor vehicle permanently." Thus, the elements required to prove the offense of unauthorized use of a motor vehicle are: (1) the intentional taking or use (2) of a motor vehicle (3) which belongs to another (4) without the other's consent or by fraud. *State v. Broussard*, 09–1225, p. 3 (La. App. 3 Cir. 04/07/10), 34 So.3d 459, 461(citing *State v. Rios*, 44,132, p. 4 (La. App. 2 Cir. 4/8/09), 7 So.3d 832, 834).

In his motion for special jury instruction, Defendant argued that a mere reading of the elements of the La. R.S. 14:68.4 was insufficient to convey to the jury that the State must prove *mens rea* or criminal intent to warrant a finding of unauthorized use of a motor vehicle. Defendant claimed that to obtain a conviction under La. R.S. 14:68.4, the State must prove beyond reasonable doubt that Defendant *knew* his use of a motor vehicle was not authorized. Specifically, Defendant requested the trial court issue the following charge:

> Further, if you find that the Accused did not have a guilty mind or the criminal intent to use the motor vehicle of another without the other's consent—that is, if you find that the state has not proven beyond a reasonable doubt that the Accused knew he lacked authorization to use the motor vehicle of another—then you must find the Accused not guilty.

This charge was based on *State v. Bias*, 400 So.2d 650 (La.1981) and *State v. Stevenson*, 02–1152 (La. App. 4 Cir. 1/22/03), 839 So.2d 203.

In *Bias*, 400 So.2d at 652-653, the Louisiana Supreme Court stated, "we construe the statute proscribing unauthorized use of a movable as requiring a showing of mens rea or criminal intent, since the 'evil' state of mind of the actor normally distinguishes criminal acts (punishable by the state alone) from mere civil wrongs (actionable by private individuals against one another)." [4] In *Stevenson*, 02–1152, pp. 4-5, 839 So.2d at 206, this Court reversed a conviction for unauthorized use of a vehicle because the State failed to establish the defendant used the vehicle with the knowledge that it was stolen. Three occupants were in the vehicle. The defendant was the driver of the car, but the passenger "was the person who 'obtained the vehicle from an unknown person for her own personal use.'" This Court noted that the State elicited no evidence that the defendant was aware of the circumstances by which the other occupant obtained the car. The Court further noted that the defendant did not attempt to elude police by fleeing and cooperated with arresting officer's investigation, and although he was stopped by police while driving a stolen automobile, "there was nothing to indicate to [the] defendant that the car was stolen."

At the hearing on the motion in the present case, the trial court found that the case law relied on by Defendant is centered "around the factors [sic] and the circumstances as to whether or not the defendant knew or should have known that the car was stolen."[5] The trial court stated that in instructing the jury it would read

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[4] Unauthorized use of a movable is the intentional taking or use of a movable which belongs to another, either without the other's consent, or by means of fraudulent conduct, practices, or representations, but without any intention to deprive the other of the movable permanently. La. R.S. 14:68(A).

[5] The trial court appears to be referring to the *Stevenson* case because while the *Bias* case did discuss *mens rea*, it addressed the crime of unauthorized use of a movable and whether evidence that a defendant defaulted on a contractual obligation involving the lease of a television set by failing either to make the rental payments or to return the television set is alone sufficient to

the language of La. R.S. 14:68.4 and the definitions general and specific intent. The trial court noted that jury instructions expressly provide that the "state of mind, i.e., *mens rea*[,] exists when circumstances indicate that the defendant actively prescribed or desired the prescribed criminal consequences to follow his act or failure to act." *See* La. R.S. 14:10(1) (defining specific intent). As a result, the trial court found it unnecessary to present additional jury instructions on intent and denied the motion for special jury instruction.[6] The trial court, however, did make an addition under the responsive verdicts to provide that "in order to find the defendant guilty as charged you [must] find … that the taking or use [of the Chrysler Concord] was intentional."

On appeal, Defendant makes the same arguments he asserted in his motion for special jury instruction.[7] In his brief, however, Defendant relies on this Court's unpublished opinion, *State v. Long*, 11-0298, *unpub*., 2012 WL 4754156 at 3, (La. App. 4 Cir. 2/8/12), in attempt to establish the trial court erred in failing to instruct the jury that to obtain a conviction the State must prove that Defendant knew his use of a vehicle was unauthorized.

In *Long*, the car, in which the defendant was a passenger, had been reported stolen a day prior to an officer stopping the car for a traffic violation. During the traffic stop, the car fled the scene, but the officer subsequently observed three subjects exiting the vehicle, including the defendant from the front passenger seat. The defendant did not drive the vehicle. The ignition was not damaged, and no

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establish beyond a reasonable doubt that defendant committed the offense. *Bias*, 400 So. 2d at 651.

[6] Defendant also raised the denial of the special jury instruction in his motion for new trial and motion for post-verdict judgment of acquittal.

glass on the vehicle was broken. There was nothing that that made it appear that a forced entry was made into a vehicle. The officer indicated that he did not suspect the vehicle as being stolen until he ran the license plate. The victim also did not identify anyone as the perpetrator of the carjacking.

The defendant requested a special jury instruction relative to the defendant's guilty knowledge that if the jury found the State had not proven beyond a reasonable doubt that the defendant knew he lacked authorization to use the motor vehicle, then the jury must find the defendant not guilty. The trial court denied the defendant's motion, and the defendant was subsequently convicted.

On appeal, the defendant argued there was insufficient evidence to support the conviction because the State failed to "establish the element of guilty knowledge—that is—that he either knew or should have known that the vehicle was stolen or that its use was unauthorized." *Long*, 2012 WL 4754156 at 3. The defendant also argued the trial court erred in denying his motion for special jury instruction.

This Court found insufficient evidence to support a conviction, noting "the mere inference of wrongful conduct by Defendant Long's presence as a passenger in the vehicle does not, beyond a reasonable doubt, create the necessary *mens rea* or criminal intent required for conviction."[8] *Long*, 2012 WL 4754156 at 5. With

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[7] Defendant argues that a mere reading of the elements of the La. R.S. 14:68.4 are insufficient to convey the elements of proof, and the trial court erred in failing to instruct the jury that to obtain a conviction the State must prove that Defendant knew his use of a vehicle was unauthorized.

[8] The Court stated in pertinent part:

> Officer Moton testified that after he was apprehended, Defendant Long stated that he was not the driver of the vehicle. Officer Moton also testified that they key was in the ignition and that Defendant Long did not state whether he knew to whom the vehicle belonged. Officer Moton also testified that the ignition was not damaged in any way and none of the glass on the vehicle was broken. Officer Moton also testified that there was no damage to

regard to the special request jury instruction, the *Long* Court found that "mere recitation of the language of the statute was insufficient to adequately convey the required elements of proof," i.e., that the defendant was aware he was using the motor vehicle without authorization. *Long*, 2012 WL 4754156 at 6. Due to the issues with the sufficiency of evidence, this Court found it could not say with certainty that the guilty verdict actually rendered in this trial was not attributable to the trial court's failure to instruct the jury on the requested charge.[9] The defendant's conviction was reversed.

> the car that would have made it appear as if forced entry was made into the vehicle. In fact, Officer Moton testified that he never suspected that the vehicle was stolen until he ran the license plate.
>
> Further, Officer Moton testified that although he spoke to the owner of the vehicle about who had initially perpetrated the carjacking, she did not identify anyone as the perpetrator of the carjacking and he did not arrest Mr. Long for carjacking. The State did not produce any evidence that Defendant Long knew that the vehicle was stolen. We find that the mere inference of wrongful conduct by Defendant Long's presence as a passenger in the vehicle does not, beyond a reasonable doubt, create the necessary *mens rea* or criminal intent required for conviction.

State v. Long, 11-0298, *unpub*., 2012 WL 4754156 at 5, (La. App. 4 Cir. 2/8/12).

[9] It is important to note that in the *Long* case, the prosecutor also incorrectly advised the jury of the elements necessary to prove La. R.S. 14:68.4(A) on two occasions during *voir dire* without curative instructions from the trial court. It provides:

> We note that during *voir dire,* the prosecutor twice incorrectly informed the jury of the required elements of the crime. Initially, the prosecutor stated as follows:
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> In a situation like this with an unauthorized use of a movable, the defendant does not have to have been the person that actually took the movable, okay? **We just have to prove—the State only has to prove that he used the movable, okay?** Is everybody—I see a lot of puzzled faces like—
>
> The defendant objected to the foregoing statement, and an unrecorded bench conference ensured. Thereafter the prosecutor stated:
>
> Ms. Kim, are you comfortable with that, with knowing that the State does have a burden of proof and we intend to meet it. And, I'll get to that later, **but all we have to prove is that the car was stolen and that the defendant was riding in it.** We have a couple of other things to prove, but I'm going to get to that. But, in this part of it, are you comfortable with that?

Although in the present case, as in *Long*, no damage was done to the car that would suggest a forced entry, contrary to *Long*, Defendant was identified by Cureau as the individual who drove off with his car without authorization. Furthermore, Defendant did not need to damage the car to steal it because Cureau left the door unlocked with the keys in the ignition. Cureau also testified that he never met Defendant prior to the incident and did not lend him the vehicle. Moreover, the officer observed Defendant driving in the vehicle and subsequently determined it belonged to Cureau. Defendant was not a mere passenger with no knowledge from where the car was obtained. Thus, unlike *Long*, which involved a passenger of stolen vehicle and no evidence that the passenger knew the vehicle in which he was riding was stolen, in the present case, Defendant was the person who entered and drove off in a car that he did not own and did not have consent to use. Because Defendant actually took the car from the gas station, the instant case is likewise distinguishable from *Stevenson*, 02-1152, p. 4, 839 So.2d at 206, the case cited in the motion for special jury instruction, wherein the defendant was unaware of the circumstances of how the vehicle was acquired.

Additionally, as discussed above, the trial court made it clear at the hearing on the motion for special jury instruction that it would instruct the jury regarding the definition of intent, both general and specific. The trial court also added to the responsive verdicts that to find Defendant guilty the jury must find that the taking or use of vehicle be intentional.

> The defendant objected, and the trial court sustained the objection; however no curative instruction was issued.
>
> The prosecutor's incorrect statements regarding the law during *voir dire* compounded the effect of the trial court's failure to properly charge the jury. [Emphasis in original].

See Long, 2012 WL 4754156 at 6, n. 2.

The issue presented in *Stevenson* and *Long* concerning whether the defendant knew the vehicle was stolen does not exist where Defendant was the one who took the car and drove away with it. Defendant did not need evidence of a broken window or damage to the steering column or ignition to know that he did not have permission to use the car as it was Defendant himself who entered and drove off in the car. Thus, we do not find that the trial court needed to include a charge concerning whether Defendant knew he lacked authority to use the vehicle.[10]

Even if the trial court erred in excluding the proposed jury charge, this Court has stated that "harmless error can be applied even to an invalid instruction on the elements of the crime if the evidence is otherwise sufficient to support the jury's verdict, and the jury would have reached the same result if it had never heard the erroneous instruction." *State v. Alverez*, 13-1652, p. 11 (La. App. 4 Cir. 12/23/14), 158 So. 3d 142, 150 (citing *State v. Hongo*, 96–2060, pp. 4–5 (La. 12/02/97), 706 So.2d 419, 421–422). A trial error is harmless when a reviewing court is convinced that the error was harmless beyond a reasonable doubt. *Id*. (citing *Chapman v. California,* 386 U.S. 18, 24, 87 S.Ct. 824, 828, 17 L.Ed.2d 705 (1967)). The state has the burden of demonstrating that the trial error did not contribute to defendant's conviction. *Id*. If a reviewing court finds that the trial record establishes guilt beyond a reasonable doubt, the interest of fairness has been satisfied and the judgment should be affirmed. *Alverez*, 13-1652, p. 11, 158 So. 3d

[10] Defendant also cites *State in Interest of H.N.*, 97-0982 (La. App. 4 Cir. 7/8/98), 717 So. 2d 666 in his brief. In *H.N.*, this Court reversed the adjudications of delinquency on the charge of unauthorized use of a moveable, finding that there was no evidence that the juveniles, who had accepted a ride and had been passengers in a vehicle, had taken or used the vehicle in question with knowledge that it had been stolen. This case, like *Long* and *Stevenson*, is distinguishable from the case at bar because Defendant was identified as the driver of the vehicle and the person who took the car from the gas station.

at 150-151 (citing *Rose v. Clark*, 478 U.S. 570, 579, 106 S.Ct. 3101, 3106, 92 L.Ed.2d 460 (1986)).

Here, Defendant's theory of defense was that Cureau allowed him to borrow the car in exchange for drugs. However, the jury heard testimony from Cureau that Defendant had taken the vehicle when he went inside the gas station to buy cigarettes, and he did not give permission to Defendant to use his car. Cureau testified that right after Defendant took off with his car he started to call the police, but was able to flag down an officer. He also stated that he had not been drinking or using drugs the night of the incident. The jury heard testimony from Off. Dede who stated that Cureau did not have drugs on his person and Cureau did not smell like marijuana. Off. Dede further testified that while she was aware of the practice of renting a car out for drugs, she has never heard of someone immediately calling the police afterwards. Additionally, the record provides that Cureau's story has been consistent throughout despite the fact that he had to be forced to testify pursuant to a material witness bond. The jury was entitled to find Cureau's version of events credible and reach the conclusion that Defendant intentionally used Cureau's vehicle without his consent.

Based on the foregoing, we find that there is sufficient evidence support the jury's verdict and that the jury would have convicted Defendant regardless of whether the jury was charged with Defendant's requested special instruction. Therefore, Defendant's first assignment of error lacks merit.

ASSIGNMENT OF ERROR NUMBER 2

In his second assignment of error, Defendant claims that the seven year sentence imposed "under the circumstances of this case, was excessive, cruel, and unusual punishment."

The Eighth Amendment to the United States Constitution prohibits the imposition of cruel and unusual punishment. U.S. Const. amend. VIII. Article I, § 20 of the Louisiana Constitution prohibits not only "cruel" and "unusual" punishment, but it also explicitly prohibits "excessive" punishment.[11] La. Const. art. I, § 20.

In *State v. Hackett,* 13-0178, p. 14 (La. App. 4 Cir. 8/21/13), 122 So. 3d 1164, 1174, *writ denied*, 2013-2122 (La. 5/2/14), 138 So. 3d 1238, this Court discussed the standard for evaluating a claim of excessive sentence:

> Although a sentence is within statutory limits, it can be reviewed for constitutional excessiveness. *State v. Sepulvado,* 367 So.2d 762, 767 (La.1979). A sentence is unconstitutionally excessive when it imposes punishment grossly disproportionate to the severity of the offense or constitutes nothing more than needless infliction of pain and suffering. *State v. Bonanno,* 384 So.2d 355, 357 (La.1980). A trial judge has broad discretion when imposing a sentence and a reviewing court may not set a sentence aside absent a manifest abuse of discretion. *State v. Cann,* 471 So.2d 701, 703 (La.1985). On appellate review of a sentence, the relevant question is not whether another sentence might have been more appropriate but whether the trial court abused its broad sentencing discretion. *State v. Walker,* [20]00–3200, p. 2 (La.10/12/01), 799 So.2d 461, 462; cf. *State v. Phillips,* [20]02–0737, p. 1 (La.11/15/02), 831 So.2d 905, 906.

Id. (quoting *State v. Smith,* 01–2574, pp. 6–7 (La. 1/14/03), 839 So.2d 1, 4).

The reviewing court shall not set aside a sentence for excessiveness if the record supports the sentence imposed. La. C.Cr.P. art. 881.4(D). *State v. Robinson,* 11–0066, p. 17 (La. App. 4 Cir. 12/7/11), 81 So.3d 90, 99; *State v.*

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[11] The Louisiana Constitution differs from the Eighth Amendment to the U.S. Constitution in its explicit prohibition of excessive sentences. This "deliberate inclusion by the redactors of the Constitution of a prohibition against 'excessive' as well as cruel and unusual punishment broadened the duty of this court to review the sentencing aspects of criminal statutes." *State v. Hamdalla*, 12-1413, p. 14 (La. App. 4 Cir. 10/2/13), 126 So. 3d 619, 626 *writ denied,* 13-2587 (La. 4/25/14), 138 So. 3d 642 (quoting *State v. Baxley,* 94–2982, p. 4 (La.5/22/95); 656 So.2d 973, 977).

Major, 96–1214 (La. App. 4 Cir. 3/4/98), 708 So.2d 813, 819. An appellate court reviewing an excessive sentence claim must determine whether the trial court adequately complied with the statutory sentencing guidelines set forth in La.C.Cr.P. art. 894.1, as well as whether the particular circumstances of the case warrant the sentence imposed. *State v. Jasper*, 14-0125, p. 20 (La. App. 4 Cir. 9/17/14), 149 So. 3d 1239, 1252 (*citing State v. Trepagnier,* 97–2427 (La. App. 4 Cir. 9/15/99), 744 So.2d 181, 189; *State v. Black,* 98–0457, p. 8 (La. App. 4 Cir. 3/22/00), 757 So.2d 887, 891). The articulation of the factual basis for a sentence is the goal of Art. 894.1, not rigid or mechanical compliance with its provisions. Where the record clearly shows an adequate factual basis for the sentence imposed, resentencing is unnecessary even when there has not been full compliance with Art. 894.1. *Id*. (citing *State v. Lanclos,* 419 So.2d 475, 478 (La.1982); *State v. Davis,* 448 So.2d 645, 653 (La.1984) (the trial court need not recite the entire checklist of article 894.1, but the record must reflect that it adequately considered the guidelines)).

The penalty range for unauthorized use of a motor vehicle is imprisonment, with or without hard labor, for not more than ten years, a fine of not more than $5000, or both. La. R.S. 14:68.4(B).[12] As stated above, Defendant was sentenced to seven years at the Department of Public Safety and assessed court costs. As such, Defendant's sentence was within the statutory range.

Defendant argues that the sentence is excessive considering that he circled the block, and the car was returned undamaged and close to the scene. Defendant

[12] La. R.S. 14:68.4(B) provides:

> Whoever commits the crime of unauthorized use of a motor vehicle shall be fined not more than five thousand dollars or

further notes that he was working as a cook and a tradesman at the time of the incident, is raising a twelve year old son, and has turned his life around following a 2002 conviction. Defendant claims the trial court did not consider any of these mitigating factors. Defendant also points out that in pre-trial proceedings, the State had offered a five year in exchange for a guilty plea, and a five year sentence would be more appropriate under the circumstances.

However, as the State argues it is brief, the pertinent question on appellate review of a sentence is whether the trial court abused its broad sentencing discretion, not whether another sentence might have been more appropriate. *Hackett*, 13-0178, p. 14, 122 So. 3d at 1174; *Smith*, 01–2574, pp. 6–7 839 So.2d at 4; *State v. Colvin*, 11-1040, p. 7 (La. 3/13/12), 85 So. 3d 663, 667-668; *State v. Humphrey*, 445 So.2d 1155, 1165 (La.1984). Although the trial court did not articulate the factual basis for the sentence, the record shows that Defendant was a triple offender with prior felony convictions for armed robbery in 1997 and 2002. Armed robbery is defined as a crime of violence under La. R.S. 14:2(B). The trial court also was advised of Defendant's multiple offender status in a pre-trial hearing and that Defendant was facing eighty months to twenty years on that charge. The State had filed the multiple bill of information, but a hearing on the bill has not yet occurred.

In selecting a proper sentence, a trial judge is not limited to considering only a defendant's prior convictions, but may properly review all prior criminal activity. *State v. Stanfield*, 10-0854, pp. 4-5 (La. App. 4 Cir. 1/19/11), 56 So. 3d 428, 431 (citing *State v. Russell*, 40,526, p. 4 (La. App. 2 Cir.1/27/05), 920 So.2d 866, 868).

> imprisoned with or without hard labor for not more than ten years or both.

The sources of information relied upon by the sentencing court may include evidence usually excluded from the courtroom at the trial of guilt or innocence, e.g., hearsay and arrests, as well as conviction records. *Stanfield*, 10-0854, p. 5, 56 So. 3d at 431 (citing *State v. Myles*, 94–0217 (La. 6/3/94), 638 So.2d 218, 220). These matters may be considered even in the absence of proof the defendant committed the other offenses. *Id*. (citing *State v. Estes*, 42,093, p. 16 (La. App. 2 Cir. 5/9/07), 956 So.2d 779, 789).

While the seven year sentence is on the higher end of the sentencing range, considering the vast discretion given to trial court in sentencing matters; that Defendant was a triple felony offender; that his prior two convictions constitute crimes of violence; and that he could be subject to a twenty year sentence as a multiple offender, we do not find that the sentence imposed is unconstitutionally excessive. Moreover, courts have upheld similar sentences for unauthorized use of a motor vehicle. *See, State v. Broussard*, 09-1225, p. 7 (La. App. 3 Cir. 4/7/10), 34 So. 3d 459, 463 (seven years of imprisonment at hard labor for unauthorized use of a motor vehicle was not constitutionally excessive where the defendant could have been subjected to imprisonment for as long as twenty years for offense as a third felony offender and was on a parole when the offense was committed); *State v. Joseph*, 05-368, p. 10 (La. App. 5 Cir. 1/17/06), 921 So. 2d 1060, 1066 (upholding sentence of seven years imprisonment at hard labor for unauthorized use of a motor vehicle); *see also*, *State v. Jefferson*, 97-2949 (La. App. 4 Cir. 4/21/99), 735 So. 2d 769 (six year sentence for unauthorized use of a motor vehicle was not an abuse of discretion) *State v. Banks*, 41,274 , p. 6 (La. App. 2 Cir. 9/20/06), 940 So. 2d 111, 114-115 (ten year hard labor sentence for conviction of unauthorized use of a

motor vehicle was not excessive where the defendant was a fourth felony offender). Therefore, we find Defendant's second assignment of error lacks merit.

For the above stated reasons, we hereby affirm Defendant's conviction and sentence.

CONVICTION AND SENTENCE AFFIRMED