Judgment rendered August 19, 2009.
Application for rehearing may be filed
within the delay allowed by Art. 922,
La. C. Cr. P.

No. 44,495-KA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

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STATE OF LOUISIANA Appellee

versus

ROBERT LEE JORDAN Appellant

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Appealed from the
Forty-Second Judicial District Court for the
Parish of DeSoto, Louisiana
Trial Court No. 0716550

Honorable Stephen B. Beasley, Judge

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LOUISIANA APPELLATE PROJECT
By: Peggy J. Sullivan
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Appellant

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Appellee

* * * * *

Before STEWART, MOORE and LOLLEY, JJ.

MOORE, J.

After a bench trial, the defendant, Robert Lee Jordan, was convicted of one count of attempted second degree murder and one count of aggravated battery. He was sentenced to 20 years at hard labor on the conviction for attempted second degree murder and to 10 years for the conviction of aggravated battery, the former sentence to be served without the benefit of parole, probation or suspension of sentence, with the two sentences to run consecutively. The defendant now appeals. We affirm.

FACTS

The defendant was charged by bill of information with two counts of attempted murder for stabbing Virginia Woods and Kizzie Scott on or about August 25, 2007. After the defendant invoked his right to a speedy trial under La C. Cr. P. art. 701 D(1), the matter came for bench trial on June 23, 2008.

At trial, Virginia Woods, a self-described 4′10″, less-than-100-lb. female, testified that she and the defendant were previously involved in a relationship, but that she had broken it off some months earlier. However, because the defendant's paycheck was mailed to Ms. Woods' home, she called the defendant to come pick it up. On that same day, a gathering took place in Ms. Woods' yard where her daughter, Shemeka, and a friend, Kizzie Scott, were having a barbecue. Ms. Woods testified that she remained inside her house during the barbecue and when the defendant came by, Ms. Woods had her daughter give him the check. The defendant then left to cash his check but returned afterwards to the gathering in Ms. Woods' front yard.

After midnight, Ms. Woods stated that she was sweeping in the house when she saw the defendant sitting in her den. She told him that she was about take a bath, and he should leave. Instead of leaving, the defendant attacked and cornered Ms. Woods in the kitchen and punched her with his fists. At the time, Ms. Woods was not aware that the defendant had a knife in one fist, and she was actually being stabbed. In addition to her earlier statement that it was dark, she speculated that the knife was concealed by a pack of cigarettes in the defendant's hand. She testified that the defendant first punched her in the chest and then struck her in the elbow as she tried to block his blows. Ms. Woods tried to fight him off with the broom but the defendant deflected the attempt.

About this time, Ms. Scott heard the disturbance from outside and tried to enter through the kitchen door, but the defendant and Ms. Woods were blocking the door. When Ms. Scott was able to push her way inside, the defendant punched her and inflicted some superficial lacerations. Shemeka, the victim's daughter, followed Scott, grabbed the defendant and pulled him outside.

In the aftermath, both Ms. Woods and Ms. Scott realized that they had been stabbed. Ms. Woods testified that she had suffered a punctured lung, underwent surgery in which part of a rib had to be removed, and was hospitalized for two weeks as a result of the attack. She also indicated that this was not the first time that the defendant had attacked her. She cited two previous instances, one in which the defendant had choked her and the other in which he had "beat" her face until she told him she loved him. On

cross-examination, Ms. Woods denied that she had attacked the defendant and that she and her guests had been using drugs on the evening in question.

In addition to the two victims, the court heard testimony from Johnny Ray Thomas and Ronnie Shane Adams, both of whom were officers with the Mansfield Police Department at the time. Thomas testified that he responded to a disturbance call at Ms. Woods' apartment on the night in question. Upon arriving he first made contact with Ms. Scott, who he noticed had a stab wound to her arm. Scott directed Thomas to Ms. Woods who was inside the home lying on a bed. Thomas found the victim with a stab wound to the left side of her chest, having difficulty breathing and unable to communicate. When EMS arrived, Ms. Scott was transported to DeSoto Regional Medical Center and Ms. Woods to LSU Medical Center. According to Thomas, Ms. Scott and the other people gathered at the house claimed that the defendant was the perpetrator and that he had fled after the incident.

Adams testified that he was the detective on call that evening and that in the course of investigating the incident he had spoken to Ms. Scott at the DeSoto Regional Medical Center. She indicated that she was standing outside when she heard a disturbance inside the home. Upon entering through the kitchen door she observed the defendant hitting Ms. Woods. Adams testified that he observed two wounds on Ms. Scott, one to her side and one on her left arm. Ms. Scott stated that she never saw the weapon with which she had been stabbed.

The state also presented the testimony of two of the responding EMS personnel, Cody Bailey and Brian Warren. Bailey had attended to Scott and testified that she had suffered two injuries, a one-inch laceration to her left arm and a stab wound to her left flank. Warren, who had attended to Ms. Woods, testified that she had a one to two-centimeter laceration on her left breast and several lacerations on her left elbow.

The defendant took the stand and admitted that he had stabbed both Ms. Woods and Ms. Scott. However, defendant's version of the events varied greatly from the version relayed by Ms. Woods. Defendant claimed that he had received a call from Ms. Woods' daughter telling him to come pick up his check. He arrived at the house somewhere between 3:00 and 4:00 p.m. and had been in the house until the altercation occurred around 2:00 a.m. the next morning. He stated that Ms. Woods and all her guests were using drugs and he told her he had to leave before the police came.

Apparently distraught at the thought of his imminent departure, Ms. Woods began to beat the defendant with a broom. When he disarmed her of that weapon she grabbed a knife and swung it at him. He took the knife away from her and threw it in the sink. At this point, the defendant testified that Ms. Scott entered the room brandishing brass knuckles with a knife and started swinging at him. Ms. Woods, meanwhile, rearmed herself with another knife. The defendant testified that he was left no choice but to grab the knife he had discarded in the sink and stab both Ms. Woods and Ms. Scott. He said that in the course of the altercation, he received wounds to both his side and neck and that these wounds were photographed by a Mr.

Adams, presumably the Mansfield Police Department investigator who testified at trial. Defendant also alleged that the Mr. Adams had informed him that Ms. Scott had refused to make a statement to police about the incident.

After closing arguments, the trial judge found the defendant guilty as charged on count one of attempted second degree murder and guilty of aggravated battery on count two. A presentence investigation was ordered and the defendant came for sentencing on October 9, 2008. At sentencing, the trial court indicated that it had reviewed the presentence investigation, taken note of the defendant's criminal and social history, the aggravating and mitigating circumstances, and the fact that the defendant was a fourth felony offender before sentencing him to 20 years at hard labor on the attempted second degree murder conviction without the benefit of parole, probation or suspension of sentence and to 10 years at hard labor on the aggravated battery conviction, with the sentences to run consecutively. A motion to reconsider sentence followed and was subsequently denied by the trial court on October 31, 2008. The defendant now appeals both his conviction and the sentences imposed.

DISCUSSION

By his first assignment of error, the defendant argues that the evidence was insufficient to support the attempted second degree murder conviction because he was acting in self-defense and because the knife he used was small enough to be hidden by a pack of cigarettes. He also argues that the evidence was insufficient to support the aggravated battery

conviction because the victim of that offense, Ms. Scott, did not testify to deny that she was brandishing a weapon at the time she was stabbed.

The standard of appellate review for a sufficiency of the evidence claim is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 2789, 61 L. Ed. 2d 560 (1979); *State v. Tate*, 2001-1658 (La. 5/20/03), 851 So. 2d 921, *cert. denied*, 541 U.S. 905, 124 S. Ct. 1604, 158 L. Ed. 2d 248 (2004); *State v. Carter*, 42,894 (La. App. 2 Cir. 1/9/08), 974 So. 2d 181, *writ denied*, 2008-0499 (La. 11/14/08), 996 So. 2d 1086. This standard, now legislatively embodied in La. C. Cr. P. art. 821, does not provide the appellate court with a vehicle to substitute its own appreciation of the evidence for that of the fact finder. *State v. Pigford*, 2005-0477 (La. 2/22/06), 922 So. 2d 517; *State v. Dotie*, 43,819 (La. App. 2 Cir. 1/14/09), 1 So. 3d 833. The appellate court does not assess the credibility of witnesses or reweigh evidence. *State v. Smith*, 94-3116 (La. 10/16/95), 661 So. 2d 442. A reviewing court accords great deference to a jury's decision to accept or reject the testimony of a witness in whole or in part. *State v. Eason*, 43,788 (La. App. 2 Cir. 2/25/09), 3 So. 3d 685; *State v. Hill*, 42,025 (La. App. 2 Cir. 5/9/07), 956 So. 2d 758, *writ denied*, 2007-1209 (La. 12/14/07), 970 So. 2d 529. *See also*, *State v. Bowie*, 43,374 (La. App. 2 Cir. 9/24/08), 997 So. 2d 36 (same deference applies to a bench trial).

The *Jackson* standard is applicable in cases involving both direct and circumstantial evidence. An appellate court reviewing the sufficiency of evidence in such cases must resolve any conflict in the direct evidence by viewing that evidence in the light most favorable to the prosecution. When the direct evidence is thus viewed, the facts established by the direct evidence and inferred from the circumstances established by that evidence must be sufficient for a rational trier of fact to conclude beyond a reasonable doubt that defendant was guilty of every essential element of the crime. *State v. Sutton*, 436 So. 2d 471 (La. 1983); *State v. Speed*, 43,786 (La. App. 2 Cir. 1/14/09), 2 So. 3d 582; *State v. Parker*, 42,311 (La. App. 2 Cir. 8/15/07), 963 So. 2d 497.

Where there is conflicting testimony about factual matters, the resolution of which depends upon a determination of the credibility of the witnesses, the matter is one of the weight of the evidence, not its sufficiency. *State v. Speed*, *supra*; *State v. Allen*, 36,180 (La. App. 2 Cir. 9/18/02), 828 So. 2d 622, *writs denied*, 2002-2595 (La. 3/28/03), 840 So. 2d 566, 2002-2997 (La. 6/27/03), 847 So. 2d 1255, *cert. denied*, 540 U.S. 1185, 124 S. Ct. 1404, 158 L. Ed. 2d 90 (2004).

Second degree murder is the killing of a human being when the offender has the specific intent to kill or to inflict great bodily harm. La. R.S. 14:30.1 A(1). Although the complete crime of second degree murder can be proved by showing either specific intent to kill or to inflict great bodily harm, the state must prove that the defendant had the specific intent to kill in order to support a conviction for attempted second degree murder.

State v. Bouie, 00-2934 (La. 5/14/02), 817 So. 2d 48; *State v. Carter*, 34,677 (La. App. 2 Cir. 5/9/01), 787 So. 2d 509, *writ denied*, 01-1707 (La. 5/3/02), 815 So. 2d 93. As a state of mind, specific intent need not be proved as a fact; it may be inferred from the circumstances and the actions of the defendant. *State v. Kahey*, 436 So. 2d 475 (La. 1983); *State v. Murray*, 36,137 (La. App. 2 Cir. 08/29/02), 827 So. 2d 488, *writ denied*, 02-2634 (La. 9/5/03), 852 So. 2d 1020. Specific intent can be inferred from the intentional use of a deadly weapon such as a knife or a gun. *State v. Templet*, 2005-2623 (La. App. 1 Cir. 8/16/06), 943 So. 2d 412, *writ denied*, 2006-2203 (La. 04/20/07), 954 So. 2d 158.

A battery is the intentional use of force or violence upon the person of another, or the intentional administration of a poison or other noxious liquid or substance to another. La. R.S. 14:33. Aggravated battery is a battery committed with a dangerous weapon. La. R.S. 14:34. "Dangerous weapon" includes any gas, liquid or other substance or instrumentality, which, in the manner used, is calculated or likely to produce death or great bodily harm. La. R.S. 14:2(3).

The standard of proof when a defendant claims self-defense in a non-homicide case is a preponderance of the evidence, although the issue of who bears that burden is unsettled in Louisiana. *State v. Freeman*, 427 So. 2d 1161 (La. 1983); *State v. Updite*, 38,423 (La. App. 2 Cir. 06/23/04), 877 So. 2d 216, *writ denied*, 2004-1866 (La. 11/24/04), 888 So. 2d 229.

Viewed in the light most favorable to the prosecution, the record in this case amply supports the trier of fact's conclusion that the defendant had

the specific intent to kill Ms. Woods and committed an act to accomplish that goal. According to Ms. Woods, the defendant struck her without warning in that he stabbed her in the chest and punctured her lung. The defendant's specific intent to kill Ms. Woods could be discerned from the fact that he stabbed her in the chest with sufficient force to puncture her left lung, and he attempted to strike additional blows which Ms. Woods deflected with her elbow. Furthermore, the evidence indicates that the defendant's attack only ended because he was interrupted by the actions of Ms. Scott. Ms. Woods was hospitalized for two weeks as a result of her wounds. *Cf. State v. Davis,* 41,245 (La. App. 2 Cir. 8/9/06), 937 So. 2d 5.

The record also supports the conclusion that the defendant did not prove his claim of self-defense by a preponderance of the evidence. *See State v. Freeman*, *supra*; *State v. Updite*, *supra*. The only evidence that he acted in self-defense was his own self-serving testimony which was directly contradicted by the testimony of Ms. Woods. The trial court made specific findings regarding the credibility of the witnesses. The role of this court is not to assess the credibility of witnesses or reweigh evidence. *See State v. Smith*, *supra*.

The evidence was also sufficient under the *Jackson* standard to support the defendant's conviction of aggravated battery. There is no question that an aggravated battery was committed upon Ms. Scott. The record reflects that defendant intentionally used force and violence upon the victim while using a dangerous weapon. The instrument which inflicted two lacerations on Ms. Scott was clearly a dangerous weapon, because, in

the manner used, it was calculated or likely to produce great bodily harm.

From the record before us, these findings by the trial court are clearly reasonable, and this assignment of error is meritless.

By his second and third assignments, the defendant contends that the trial court failed to articulate sufficient reasons to justify imposing consecutive sentences of 20 years and 10 years, and that the sentences imposed are unconstitutionally harsh and excessive and constitute cruel and unusual punishment considering the defendant's age.

The test imposed by the reviewing court in determining the excessiveness of a sentence is two-pronged. First, the record must show that the trial court took cognizance of the criteria set forth in La. C. Cr. P. art. 894.1. The trial judge is not required to list every aggravating or mitigating circumstance so long as the record reflects that he adequately considered the guidelines of the article. *State v. Smith*, 433 So. 2d 688 (La. 1983); *State v. Lathan*, 41,855 (La. App. 2 Cir. 2/28/07), 953 So. 2d 890, *writ denied*, 2007-0805 (La. 3/28/08), 978 So. 2d 297. The articulation of the factual basis for a sentence is the goal of La. C. Cr. P. art. 894.1, not rigid or mechanical compliance with its provisions. Where the record clearly shows an adequate factual basis for the sentence imposed, remand is unnecessary even where there has not been full compliance with Art. 894.1. *State v. Lanclos*, 419 So. 2d 475 (La. 1982); *State v. Swayzer*, 43,350 (La. App. 2 Cir. 8/13/08), 989 So. 2d 267. The important elements which should be considered are the defendant's personal history (age, family ties, marital status, health, employment record), prior criminal record, seriousness of

offense and the likelihood of rehabilitation. *State v. Jones*, 398 So. 2d 1049 (La. 1981); *State v. Ates*, 43,327 (La. App. 2 Cir. 8/13/08), 989 So. 2d 259. There is no requirement that specific matters be given any particular weight at sentencing. *State v. Shumaker*, 41,547 (La. App. 2 Cir. 12/13/06), 945 So. 2d 277, *writ denied*, 2007-0144 (La. 9/28/07), 964 So. 2d 351.

Second, a sentence violates La. Const. Art. 1, §20 if it is grossly out of proportion to the seriousness of the offense or nothing more than a purposeless and needless infliction of pain and suffering. *State v. Smith*, 2001-2574 (La. 1/14/03), 839 So. 2d 1; *State v. Dorthey*, 623 So. 2d 1276 (La. 1993); *State v. Bonanno*, 384 So. 2d 355 (La. 1980). A sentence is considered grossly disproportionate if, when the crime and punishment are viewed in light of the harm done to society, it shocks the sense of justice. *State v. Weaver*, 2001-0467 (La. 1/15/02), 805 So. 2d 166; *State v. Lobato*, 603 So. 2d 739 (La. 1992); *State v. Robinson*, 40,983 (La. App. 2 Cir. 1/24/07), 948 So. 2d 379; *State v. Bradford*, 29,519 (La. App. 2 Cir. 4/2/97), 691 So. 2d 864.

When two or more convictions arise from the same act or transaction, or constitute parts of a common scheme or plan, the terms of imprisonment shall be served concurrently unless the court expressly directs that some or all be served consecutively. La. C. Cr. P. art. 883. Concurrent sentences arising out of a single course of conduct are not mandatory, and it is within a trial court's discretion to order sentences to run consecutively rather than concurrently. *State v. Johnson*, 42,323 (La. App. 2 Cir. 8/15/07), 962 So. 2d 1126; *State v. Boudreaux*, 41,660 (La. App. 2 Cir. 12/13/06), 945 So. 2d

898, *writ denied*, 2007-0058 (La. 11/2/07), 966 So. 2d 591; *State v. Robinson*, 33,921 (La. App. 2 Cir. 11/01/00), 770 So. 2d 868.

A judgment directing that sentences arising from a single course of conduct be served consecutively requires particular justification from the evidence or record. When consecutive sentences are imposed, the court shall state the factors considered and its reasons for the consecutive terms. *State v. Johnson, supra*; *State v. Boudreaux, supra*; *State v. Mitchell*, 37,916 (La. App. 2 Cir. 3/03/04), 869 So. 2d 276, *writ denied*, 04-0797 (La. 9/24/04), 882 So. 2d 1168, *cert. denied*, 543 U.S. 1068, 125 S. Ct. 905, 160 L. Ed. 2d 801 (2005).

Among the factors to be considered are the defendant's criminal history, the gravity or dangerousness of the offense, the viciousness of the crimes, the harm to the victims, whether the defendant constitutes an unusual risk of danger to the public, the potential for defendant's rehabilitation, and whether defendant has received a benefit from a plea bargain. *State v. Jett*, 419 So. 2d 844 (La. 1982); *State v. Boudreaux, supra*.

The failure to articulate specific reasons for consecutive sentences does not require remand if the record provides an adequate factual basis to support consecutive sentences. *See State v. Boudreaux, supra*.

The sentencing range for attempted second degree murder is imprisonment from 10 to 50 years at hard labor without benefit of parole, probation or suspension of sentence. La. R.S. 14:30.1; 14:27 D(1)(a). Aggravated battery carries a maximum sentence of 10 years imprisonment, with or without hard labor, and a fine up to $5,000, or both. La. R.S. 14:34.

As a general rule, maximum or near maximum sentences are reserved for the worst offenders and the worst offenses. *State v. Cozzetto*, 2007-2031 (La. 2/15/08), 974 So. 2d 665; *State v. McKinney*, 43,061 (La. App. 2 Cir. 2/13/08), 976 So. 2d 802; *State v. Woods*, 41,420 (La. App. 2 Cir. 11/1/06), 942 So. 2d 658, *writs denied*, 2006-2768, -2781 (La. 6/22/07), 959 So. 2d 494; *State v. Grissom*, 29,718 (La. App. 2 Cir. 8/20/97), 700 So. 2d 541.

While the trial court did not articulate reasons for the sentences imposed, the record in this case supports the aggregate 30-year sentence. Contrary to the defendant's claim that sufficient justification is lacking, the consecutive sentences are adequately justified for this particular defendant in these particular convictions. The consecutive sentences imposed amount to far less than the maximum sentence exposure defendant faced on the attempted second degree murder conviction alone. Considering the defendant's criminal history, the violent nature of his crime and the suffering Ms. Woods endured, the trial court did not err in imposing consecutive sentences.

As to the defendant's claim of unconstitutional excessiveness, it is noted that the 20-year sentence on the attempted second degree murder is less than one-half of the maximum exposure. Given his prior violent conduct toward this particular victim and his prior convictions for violent crimes, this sentence does not shock the sense of justice.

The defendant's maximum 10-year sentence for aggravated battery presents a closer call in light of the trial court's failure to articulate the reasons therefor. However, after reviewing the presentence investigation

report which the trial court relied on, we do not find error in the trial court's treatment of the defendant as a worst offender. In the 15 years preceding the instant offense, the defendant had been convicted of armed robbery, aggravated battery and forgery, and been arrested on numerous counts of simple battery and drug charges. The defendant has a high school education but little work experience in the 30 years since. Defendant had a history of crimes of violence, particularly against women, and in the present case used a dangerous weapon which could have caused the victim's death. There was no provocation as the victim of the aggravated battery (Ms. Scott) was simply offering assistance to the defendant's primary victim (Ms. Woods). Accordingly, the sentence imposed on the aggravated battery conviction does not shock the sense of justice nor is it grossly out of proportion to the seriousness of the offense.

This assignment is therefore without merit.

CONCLUSION

For the foregoing reasons, the defendant's convictions and sentences are affirmed.

CONVICTIONS AND SENTENCES AFFIRMED.