Judgment rendered June 26, 2019.
Application for rehearing may be filed
within the delay allowed by Art. 992,
La. C. Cr. P.

No. 52,755-KA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

* * * * *

STATE OF LOUISIANA Appellee

versus

SHAMICHAEL EDWARDS Appellant

* * * * *

Appealed from the
First Judicial District Court for the
Parish of Caddo, Louisiana
Trial Court No. 334,115

Honorable Brady D. O'Callaghan, Judge

* * * * *

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* * * * *

Before MOORE, GARRETT, and THOMPSON, JJ.

THOMPSON, J.

This appeal arises from the First Judicial District Court, Parish of Caddo, the Honorable Brady O'Callaghan presiding. Defendant Shamichael Edwards was found guilty of carjacking following a jury trial. Defendant was sentenced as a fourth-felony offender to 35 years at hard labor without benefit of probation, parole, or suspension of sentence. Defendant now appeals. For the following reasons, Defendant's conviction and sentence are affirmed.

FACTS AND PROCEDURAL HISTORY

On September 2, 2015, Defendant Shamichael Edwards (hereinafter "Defendant") was charged by bill of information with carjacking, a violation of La. R.S. 14:64.2, for an offense alleged to have been committed on July 10, 2015. After a trial[1] held May 14-16, 2018, a jury returned a verdict of guilty as charged.

At Defendant's trial, the following facts were elicited: The victim, Irvin Calhoun, testified that he had known Defendant for about three weeks prior to the incident on July 10, 2015. Calhoun stated that he first met Defendant outside of the El Dorado Casino in Shreveport, Louisiana, Calhoun's place of employment. Calhoun testified that it was at that first meeting that he discovered that Defendant was deaf. Calhoun stated that he offered Defendant a ride to the Mooretown neighborhood of Shreveport, where Defendant lived. Calhoun averred that he and Defendant exchanged phone numbers and were able to communicate through texts, writing and

[1] At the trial and all other court proceedings, there were interpreters in court to translate the proceedings into American Sign Language for Defendant, who is hearing disabled.

gestures or body language. Calhoun testified that he found Defendant attractive, but he denied being in a relationship with him.

Calhoun testified that he gave Defendant rides to Mooretown several times. He once bought a pair of shoes for Defendant, and several times he brought Defendant to his apartment and they "hung out," which involved him cooking for Defendant and watching movies together. Calhoun testified that, on another occasion, Defendant told him that he needed money for his mom, because he did not have any food. Defendant came by his apartment and he gave Defendant some money and a bottle of alcohol. Calhoun testified that he never expected anything in return for helping Defendant.

In addition to working at the casino, Calhoun testified that he worked as a hairdresser. Calhoun stated that at the time of the incident in July 2015, he owned a Dodge Nitro, for which he had just finished paying. Calhoun noted that he had also just put new rims and tires on the SUV. Calhoun testified that he kept a lot of personal information, such as his birth certificate, social security card, checks and his "statements" in the vehicle in the glove box, which he kept locked.

Calhoun testified that around 11:00 p.m. on July 10, 2015, as he was getting off work, he received a text from Defendant, who needed a ride from his apartment in Mooretown to his aunt's house. Calhoun testified that he picked Defendant up from the Clear Horizons Apartments in Mooretown and drove him to the Bel Air Apartments, located in the Cedar Grove neighborhood of Shreveport.[2] Calhoun testified that he felt uneasy being at the apartments because they were not well lit. Calhoun testified that

[2] The Bel Air Apartments are now called the Woodlawn Terrace Apartments.

Defendant communicated to him that the people he was there to see had just stepped out of their apartment and would be right back. Defendant asked him to wait.

Calhoun testified that he realized that a shooting had occurred at those apartments a couple of weeks before, and he told Defendant he wanted to leave; Defendant's response was, "Give me five minutes," and he kept looking back towards the car. Calhoun testified that he told Defendant he was ready to go, and Defendant replied, "Hold on." Calhoun testified that during this encounter, Defendant appeared very nervous, as though he was looking for someone. Calhoun testified that Defendant went to the apartments and came back, and as Calhoun said, "Let's go," Defendant reached over Calhoun, snatched the keys out of the ignition and grabbed Calhoun's phone. Calhoun testified that Defendant then stepped away from the car and stood there.

Calhoun testified that Defendant motioned to him to get out of the car. Calhoun testified that Defendant communicated with him through hand gestures that he wanted $300 from Calhoun in return for his keys. Calhoun stated, "Once I saw his hand in his pocket and I saw his stance, that's when I saw the aggression. That's when it was like, I was just another dude on a corner. You know, I don't know you, but I want $300 or you're not getting at your keys." Calhoun testified that he said, "Where am I going to get $300 from?" Calhoun stated that Defendant pointed at the nearby liquor store, indicating that he wanted Calhoun to use the ATM there to get the money.

Calhoun testified that they began walking towards the liquor store, with Defendant about five feet from him. Calhoun testified that whenever he sped up, Defendant would grunt at him in order to get him to slow down.

Calhoun testified that he thought that, when Defendant continued to look back at the apartments, he was waiting for someone to come and help him. Calhoun stated that Defendant kept his left hand in his pocket, and Calhoun knew that Defendant carried a knife. Calhoun testified that he did not see a knife, however. Calhoun testified:

> First of all, he's bigger than I am; and I didn't know how desperate he was. So I wasn't going to…make the situation worse than what it already was. I'm a sensible person. I know when I'm in danger. So I just had to submit and see where this was going to go and see if I could find a way out of it.

According to Calhoun, Defendant indicated that once Calhoun gave him money, Calhoun would get his keys back. Calhoun stated that they walked about eight or nine blocks to the liquor store, but it was closed. Calhoun testified that Defendant then indicated that they would walk to the Circle K, another eight or nine blocks away. Calhoun testified that once they got to the Circle K, Defendant stayed outside the store and hid behind a tree, watching Calhoun enter the store. Calhoun stated that when he entered the Circle K, he alerted the clerk to Defendant's presence, the clerk looked at the tree behind which Defendant was hiding, and Defendant ran off. Calhoun testified that he borrowed the phone of a woman who entered the store and called 9-1-1. Calhoun testified that he did not want to fight Defendant; he just wanted to get inside the Circle K and get help.

Calhoun testified that the police arrived and took his statement, and at that point he believed that his car was still at the Bel Air Apartments. Calhoun stated that he then rode around the Bel Air Apartments and the Mooretown neighborhood with the police looking for Defendant. Calhoun testified that the police took him to his apartment, which is in the warehouses in downtown Shreveport. Calhoun stated that he contacted a

friend/neighbor, and used her phone to text his phone, which remained in Defendant's possession. Calhoun testified that he and Defendant began a text exchange about what had happened. These text messages were admitted into evidence. Calhoun testified that at that point he was no longer afraid of Defendant, he was just angry.

Calhoun testified that he received the following text from Defendant, "If u have 200 for me then I will have to bring ur car…that's the deal." Calhoun responded, "Bring me my car." Calhoun testified that he understood the text to mean that if he gave Defendant $200, he would get his car back. At one point, Defendant texted, "I thought u was going to call the police on me." Calhoun testified that he lived alone, which Defendant knew, and his car was the only way he had to get to and from work. Calhoun stated that he was trying to arrange to meet Defendant and give him the money in exchange for his car keys. Calhoun testified that the car cost him $17,000, and he put $5,000 rims on it, so $200 compared to what he had spent on the car was inconsequential. Calhoun testified that Defendant sent him all over the place to try and get his car back, and the texts show that Defendant told Calhoun to meet him at various locations, including two different casinos, as well as the city bus station. Calhoun testified that Defendant never showed up with his car.

Calhoun testified that he received the following text from Defendant, "Then so I will tell u that I will bring the car back for u right now but if u lying to me then I will f*** over u an still know where u at." Calhoun stated that he took that text to mean that Defendant would hurt him if he did not get his way. Calhoun testified that he texted to Defendant, "Was u waiting on

someone else to come help u," to which Defendant replied, "Nobody…just myself."

Calhoun testified that his car was eventually found sitting on bricks with the engine "gone." Calhoun stated that his personal information from the glove box, the tires and parts of the engine were missing. Calhoun further testified that the windows of the car were "busted out," the car was scratched and the door handles were broken off. Calhoun testified that he picked Defendant out of a photographic lineup.

On cross-examination, Calhoun was asked about the discrepancy between his testimony and what Shreveport Police Detective Chris Bordelon put in his report; Det. Bordelon's report stated that Defendant had driven Calhoun to the Circle K, watched him walk in, and then drove away in the victim's car. Calhoun affirmed his testimony that he and Defendant had walked to the Circle K, and Defendant had fled on foot.

Calhoun testified that, in the texts he sent to Defendant after his car was taken wherein he stated, "Didn't see as my friend u could have gotten so much more," and "I saw me loving you," Calhoun was "play[ing] it sensitive to get my car back." On redirect, when asked why he did not run away from Defendant when Calhoun was walking to the liquor store and Circle K, he testified:

> I know he's faster than…if he wanted to catch me, he could have caught me. That's why I tried to play everything as calmly as I could, because it was what it was. I just needed to wait for that moment that I felt in my spirit that I can't ask for help or change the situation in my favor.

Shreveport Police Detective Jeremy Blanchard testified that he was on patrol on the night of July 10, 2015, when he got called to the Circle K at 325 W. 70th Street in Shreveport around 1:00 a.m. Det. Blanchard testified

that he met with Calhoun, who told him that he had picked up "Jason" at the Clear Horizons Apartments, and that "Jason" asked Calhoun to take him to the Woodlawn Terrace Apartments on 68th Street and Cliff Avenue. Det. Blanchard testified that Calhoun related that "Jason" had asked to borrow his phone, took the keys from the ignition of Calhoun's vehicle, and communicated to Calhoun that he wanted money in exchange for the keys.

Det. Blanchard testified that Calhoun told him that "Jason" made him walk to the Circle K, which was about six or seven blocks from the apartments. Once they got there, "Jason" went across the street and told Calhoun to go to the ATM. "Jason" watched him walk into the Circle K. Calhoun borrowed the phone of a person at the Circle K to call 9-1-1, and "Jason" took off. Det. Blanchard testified that Calhoun's vehicle was not at the apartments at that point, and he drove Calhoun around to look for the car, then took him back to his apartment in downtown Shreveport. Det. Blanchard testified that Calhoun described Defendant as 6'4" or 5" and 240-250 lbs.

On cross-examination, Det. Blanchard affirmed that his report reflected that Calhoun stated that he had known Defendant for one week and that Calhoun was asked by Defendant to walk from his vehicle to the Circle K. Det. Blanchard testified that you could not see Calhoun's car where it was parked at the Bel Air Apartments from the Circle K. Det. Blanchard testified that the Circle K was well lit, but the Bel Air Apartments were not. Det. Blanchard testified that he had originally charged Defendant with theft.

Harold Mims testified that he lives at 525 W. 74th Street in Shreveport. Mims stated that he has known Defendant since he was a child, and that he communicates with Defendant with his hands. According to

Mims, although he does not know sign language, it was not very hard for him to understand Defendant, because Mims has family members who are deaf. Mims testified that he knew Defendant to be "a gentle, sweet, kind young man." Mims testified that the police came to his home on July 27, 2015, inquiring about a vehicle (Calhoun's SUV) in his backyard. Mims stated that he did not know the vehicle was there until he was told by people that visited his home that the car was there, and had been put in the yard by Defendant. Mims testified that Defendant told him the car belonged to Defendant's cousin, and that Defendant took the tires off the car to sell in order to get his cousin out of jail. Mims stated that Defendant did not get permission from him to put the car in his backyard. Mims further testified that he did not know Calhoun, and he did not know the car was stolen.

Shreveport Police Corporal Torian Wesley testified that he was working patrol on July 27, 2017,[3] and was dispatched to Mims' home at 525 W. 74th Street, where he found a stolen vehicle in Mims' backyard. Cpl. Wesley testified that the car was sitting on four blocks, without any tires. Cpl. Wesley corroborated Mims' testimony that Defendant had told Mims that the car belonged to Defendant's cousin and that he had taken the rims off the car to sell in order to get his cousin out of jail. Cpl. Wesley testified that Mims said that he did not think the car was stolen, because Defendant

[3] There is a discrepancy between Mims' testimony and Cpl. Wesley's testimony regarding the date that police contacted Mims about the stolen car in his backyard. Mims was asked if police contacted him on July 27, 2015, and Cpl. Wesley was asked if he made contact with Mims on July 27, 2017. Both witnesses answered affirmatively. According to the testimony of Det. Christopher Bordelon at Defendant's preliminary hearing, held on ***September 2, 2015***, ***Calhoun's vehicle was recovered on July 26 or 27, 2015.***

had the keys to the car. Cpl. Wesley testified that the driver's side was dusted for prints.

Shreveport Police Corporal Rodney Medlin testified that he was dispatched to assist Cpl. Wesley on July 27, 2017,[4] at 525 W. 74th Street in Shreveport. Cpl. Medlin affirmed that the car in Mims' yard was reported stolen, and was found without wheels and on cinderblocks. Cpl. Medlin testified that it appeared that the vehicle was being concealed in the yard.

Detective Bordelon testified that he spoke with Calhoun on July 24, 2015. Det. Bordelon confirmed the victim's testimony regarding the incident, specifically that Defendant removed the keys from the ignition, demanded money from Calhoun in exchange for the keys, and made him walk first to the liquor store, then to the Circle K to withdraw money in exchange for his car keys. Det. Bordelon described Calhoun as "timid and nervous" in relating the crime to him, and stated that Calhoun was a "meeker person," small in stature. Calhoun told him that he did not believe he could get his car back due to the size discrepancy between himself and Defendant. Det. Bordelon testified that Calhoun stated that he felt physically threatened by Defendant; Calhoun described Defendant as tall, muscular and deaf. Det. Bordelon testified that at the time of the crime, Defendant was working as a personal trainer, and he weighed about 30 pounds more than he did at the time of trial.

Detective Bordelon stated that Calhoun picked Defendant out of a photo lineup. Det. Bordelon testified that Calhoun's texts to Defendant immediately after the crime were "bluster," and Calhoun "felt much safer

[4] *See* fn. 3.

being at a distance in attempting to regain his vehicle." Det. Bordelon talked about the discrepancies between his report and Calhoun's testimony regarding whether Calhoun and Defendant walked or drove to the Circle K, and said that he believed he may have written the report incorrectly, acknowledging that it was "less than perfect police work." Det. Bordelon stated that he interpreted what Calhoun related to him as well as he could at the time, noting that Calhoun was very emotional at the time.

Det. Bordelon testified that Calhoun stated that Defendant's entire demeanor changed after he took the keys. Det. Bordelon testified that Calhoun never told him that Defendant touched him or threatened him with harm through texts or writing. Det. Bordelon testified that he asked Calhoun why he did not try to get away, and Calhoun said that he knew Defendant would catch him and then cause physical harm to him.

The state rested. Outside the presence of the jury, Defendant was advised of his Fifth Amendment privilege and elected not to testify. Defense counsel did not present any witnesses. The trial court had a discussion in chambers about the jury instructions in this case, specifically, issues involving "taking" and the meaning of "in the presence of" from the carjacking statute, La. R.S. 14:64.2.[5] The trial court, in its instructions to the jury, defined "taking" as "an attempt to negate or usurp the owner's dominion," and defined property "in the presence of a person" as property "within his reach, inspection, observation or control, that he could, if not overcome by violence or prevented by fear, retain his possession of it."[6]

[5] The trial court stated that it would provide a *per curiam* opinion in the event of a conviction, but there is not one in the record.

[6] The record reflects that there were no objections to these particular jury charges.

Defendant was found guilty as charged. Defendant filed motions for a new trial and post-verdict judgment of acquittal; on June 18, 2018, those motions were denied. On August 2, 2018, Defendant was adjudicated a fourth-felony offender and sentenced to 35 years at hard labor without benefit of probation, parole, or suspension of sentence. On August 8, 2018, Defendant filed a motion to reconsider sentence; on October 11, 2018, that motion was denied. Defendant has appealed.

DISCUSSION

Defendant has assigned the following errors:

> (1) The evidence at trial was insufficient to convict defendant of the offense of carjacking.
>
> (2) The trial court erred in failing to sentence defendant on the original conviction before sentencing him as a habitual offender.
>
> (3) The trial court erred in finding defendant to be a fourth felony offender.
>
> (4) The trial court erred in imposing a constitutionally excessive sentence.

Sufficiency of the Evidence

Defendant first argues that the element of force or intimidation required for a carjacking conviction is not present in this case, noting Calhoun's testimony that he: never saw Defendant with a knife, was not threatened with a knife, and never told police that Defendant possibly had a knife. According to Defendant, Calhoun never told Det. Bordelon that Defendant was known to carry a knife, and there was no evidence of force or intimidation in Det. Bordelon's report. Defendant also argues that Calhoun was not in the presence of the vehicle when it was taken, another required element of carjacking.

The State argues that Calhoun was intimidated and forced to comply with Defendant's demands because of Defendant's size and aggressive behavior. The State contends that Defendant demanded $300 in exchange for Calhoun's car keys. The State further argues that the taking of the car occurred when Defendant grabbed the car keys in the presence of the victim. According to the State, Calhoun surrendered the dominion of his car to Defendant in order to avoid great bodily harm. Defendant then took the car and left it at a relative's home, where it was later recovered stripped of its wheels, rims and motor.

Applicable law

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, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); *State v. Tate*, 01-1658 (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. Bass*, 51,411 (La. App. 2 Cir. 6/21/17), 223 So. 3d 1242, *writ not cons*., 18-0296 (La. 4/16/18), 239 So. 3d 830. 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*, 05-0477 (La. 2/22/06), 922 So. 2d 517; *State v. Burch*, 52,247 (La. App. 2 Cir. 11/14/18), 259 So. 3d 1190. 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. *State v. Smith,* 441 So. 2d 739 (La. 1983); *State v. Barnett,* 52,406 (La. App. 2 Cir. 01/16/19), 262 So. 3d 477; *State v. Chatman,* 49,970 (La. App. 2 Cir. 06/24/15), 167 So. 3d 1136, *writ denied,* 15-1422 (La. 09/06/16), 205 So. 3d 916. 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. Norman,* 51,258 (La. App. 2 Cir. 05/17/17), 222 So. 3d 96, *writ denied,* 17-1152 (La. 04/20/18), 240 So. 3d 926.

Direct evidence provides proof of the existence of a fact, for example, a witness's testimony that he saw or heard something. *State v. Lilly,* 468 So. 2d 1154 (La. 1985); *State v. Baker,* 49,175 (La. App. 2 Cir. 08/27/14), 148 So. 3d 217. Circumstantial evidence consists 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. Broome,* 49,004 (La. App. 2 Cir. 4/9/14), 136 So. 3d 979, *writ denied,* 14-0990 (La. 01/16/15), 157 So. 3d 1127. For a case resting essentially upon circumstantial evidence, that evidence must exclude every reasonable hypothesis of innocence. La. R.S. 15:438; *State v. Christopher,* 50,943 (La. App. 2 Cir. 11/16/16), 209 So. 3d 255, *writ denied,* 16-2187 (La. 09/06/17), 224 So. 3d 985.

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; *State v. Walker,* 51,217 (La. App. 2 Cir. 05/17/17), 221 So. 3d 951, *writ*

denied, 17-1101 (La. 06/01/18), 243 So. 3d 1064. 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. Ward*, 50,872 (La. App. 2 Cir. 11/16/16), 209 So. 3d 228, *writ denied*, 17-0164 (La. 9/22/17), 227 So. 3d 827. In the absence of internal contradiction or irreconcilable conflict with physical evidence, one witness's testimony, if believed by the trier of fact, is sufficient support for a requisite factual conclusion. *State v. Hust*, 51,015 (La. App. 2 Cir. 01/11/17), 214 So. 3d 174, *writ denied*, 17-0352 (La. 11/17/17), 229 So. 3d 928. The trier of fact is charged to make a credibility evaluation and may, within the bounds of rationality, accept or reject the testimony of any witness; the reviewing court may impinge on that discretion only to the extent necessary to guarantee the fundamental due process of law. *State v. Sosa*, 05-0213 (La. 01/19/06), 921 So. 2d 94; *State v. Hust*, *supra*.

A reviewing court accords great deference to a fact finder's decision to accept or reject the testimony of a witness in whole or in part. *State v. Brown*, 51,352 (La. App. 2 Cir. 05/2/17), 223 So. 3d 88, *writ denied*, 17-1154 (La. 05/11/18), 241 So. 3d 1013.

La. R.S. 14:64.2 states in part,

> (A) Carjacking is the intentional taking of a motor vehicle, as defined in R.S. 32:1(40), belonging to another person, in the presence of that person, or in the presence of a passenger, or any other person in lawful possession of the motor vehicle, by the use of force or intimidation.

Thus, the elements of carjacking are: (1) the intentional taking (2) of a motor vehicle, as defined in La. R.S. 32:1(40) (3) belonging to another person (4) in the presence of that person, or in the presence of a passenger, or any other

person in lawful possession of the motor vehicle (5) by the use of force or intimidation. *State v. Baker*, 49,841 (La. App. 2 Cir. 05/20/15), 166 So. 3d 1152, *writ denied*, 15-1219 (La. 03/04/16), 185 So. 3d 745.

There is no Louisiana jurisprudence explaining what "in the presence of the person" means under La. R.S. 14:64.2. The trial court cited *State v. Thomas*, 447 So. 2d 1053 (La. 1984), in determining the phrase's meaning. The court in *State v. Thomas*, *supra* at 1055, stated, "The property taken in a robbery must be sufficiently under the victim's control that, absent violence or intimidation, the victim could have prevented the taking. If a defendant has taken advantage of a situation which resulted from the prior use of force or intimidation, most jurisdictions hold that a robbery has occurred." The carjacking statute, La. R.S. 14:64.2, is included in the criminal code with other robbery statutes, and is itself a type of robbery. Therefore, the reasoning set forth by the court in *State v. Thomas*, *supra*, is applicable.

Application of law to facts

Defendant took Calhoun's keys out of the ignition, effectively taking control of the car away from Calhoun. It is of no moment that Defendant did not immediately drive away with Calhoun's car. His intent was clearly to take dominion of the vehicle away from Calhoun and to intimidate Calhoun into giving him money. Once the keys were in Defendant's possession, he had committed the offense of carjacking through intimidation.

Calhoun testified that he knew Defendant carried a knife. Defendant had his hand in his pocket when he instructed Calhoun to walk to the liquor store. Calhoun testified that Defendant was taller than and outweighed him, making him feel that if he ran away, he would be attacked. Calhoun stated that Defendant's demeanor changed when he took Calhoun's keys out of the

ignition; Calhoun described Defendant's demeanor as "aggressive." Det. Bordelon testified that Calhoun was a meek person, smaller in stature than Defendant, and he was clearly timid and nervous in relating the crime to the police. Furthermore, Calhoun's call to 9-1-1 soon after entering the Circle K shows that he was afraid of Defendant and what he might do. Defendant then fled, took Calhoun's car, had it stripped of its wheels, rims and motor, before hiding it in Mims' yard.

The evidence is sufficient to support Defendant's conviction for carjacking. This assignment of error lacks merit.

Sentencing

(1) Defendant argues that, under La. R.S. 15:529.1, the trial court was required to vacate the original sentence before imposing an enhanced sentence. According to Defendant, a sentence for carjacking was never imposed, and, therefore, could not be vacated. (2) Defendant next asserts that the minute entries for the guilty pleas he entered on the three predicate offenses do not show that the trial court made any attempt to ascertain whether he had the capacity to understand the rights he was surrendering. (3) Finally, Defendant argues that the minute entries show that no information was elicited regarding his age, education, or level of understanding. According to Defendant, the trial court did not request a pre-sentencing report and based his sentence solely on his criminal history, his carjacking offense and his adjudication as a fourth-felony offender, ignoring the requirements of La. C. Cr. P. art. 894.1.

(1) The State argues that there is no requirement under the Habitual Offender Law that the trial court must impose a previous sentence before vacating it and imposing a sentence as a habitual offender. The State also

argues that there was no objection made prior to Defendant's sentence as a habitual offender or in his motion to reconsider sentence. (2) The State next asserts that Defendant did not object to the state's submission of the bills of information, copies of the minutes and certified copies of Defendant's fingerprints for the three predicate felonies when they were introduced at Defendant's sentencing hearing. (3) The State argues that Defendant, as a fourth-felony offender, faced a sentencing range of 20 years to life imprisonment, and his sentence of 35 years was not excessive given the evidence in this case.

Applicable law

Defendant's carjacking offense was committed in 2015; the Habitual Offender Law in effect at that time provides in part:

> A. Any person who, after having been convicted within this state of a felony, or who, after having been convicted under the laws of any other state or of the United States, or any foreign government of a crime which, if committed in this state would be a felony, thereafter commits any subsequent felony within this state, upon conviction of said felony, shall be punished as follows:
>
> . . .
>
> > (4) If the fourth or subsequent felony is such that, upon a first conviction the offender would be punishable by imprisonment for any term less than his natural life then:
> >
> > > (a) The person shall be sentenced to imprisonment for the fourth or subsequent felony for a determinate term not less than the longest prescribed for a first conviction but in no event less than twenty years and not more than his natural life; or
> >
> > . . .
>
> C. The current offense shall not be counted as, respectively, a second, third, fourth, or higher offense if more than ten years have elapsed between the date of the commission of the current offense or offenses and the expiration of the maximum sentence

> or sentences of the previous conviction or convictions, or between the expiration of the maximum sentence or sentences of each preceding conviction or convictions alleged in the multiple offender bill and the date of the commission of the following offense or offenses. In computing the intervals of time as provided herein, any period of parole, probation, or incarceration by a person in a penal institution, within or without the state, shall not be included in the computation of any of said ten-year periods between the expiration of the maximum sentence or sentences and the next succeeding offense or offenses.
>
> . . .
>
> D. (3) When the judge finds that he has been convicted of a prior felony or felonies, or if he acknowledges or confesses in open court, after being duly cautioned as to his rights, that he has been so convicted, the court shall sentence him to the punishment prescribed in this Section, and shall vacate the previous sentence if already imposed.
>
> . . .
>
> G. Any sentence imposed under the provisions of this Section shall be at hard labor without benefit of probation or suspension of sentence.

La. R.S. 15:529.1.

The current Habitual Offender Law states:

> (1) Except as provided in Paragraph (2) of this Subsection, notwithstanding any provision of law to the contrary, the court shall apply the provisions of this Section that were in effect on the date that the defendant's instant offense was committed.
>
> (2) The provisions of Subsection C of this Section as amended by Act Nos. 257 and 282 of the 2017 Regular Session of the Legislature, which provides for the amount of time that must elapse between the current and prior offense for the provisions of this Section to apply, shall apply to any bill of information filed pursuant to the provisions of this Section on or after November 1, 2017, accusing the person of a previous conviction.

La. R.S. 15:529.1(K).[7]

[7] The effective date of this legislation was August 1, 2018. Defendant's habitual offender bill was filed on June 18, 2018, so the ten-year cleansing period still applies to him, because that was the law in effect on the date of his offense, even though his habitual offender bill was filed after November 1, 2017. *See*, 2018 La. Act 542.

La. R.S. 14:64.2(B) provides that whoever commits the crime of carjacking shall be imprisoned at hard labor for not less than two years and for not more than 20 years, without benefit of parole, probation, or suspension of sentence.

Our courts have held that the state need not introduce a "perfect" transcript of a guilty plea to prove a prior conviction. The state may offer a "guilty plea form, a minute entry, an 'imperfect' transcript, or any combination thereof," and this offering shifts the burden of proof to the defendant to show some irregularity. *State v. Welch*, 45,950 (La. App. 2 Cir. 1/26/11), 57 So. 3d 442, *writ denied*, 11–0423 (La. 9/16/11), 69 So. 3d 1145.

This Court has rejected the argument that, for purposes of a habitual offender adjudication, the state is required to prove that when the defendant pled guilty to the predicate offenses, he actually waived his *Boykin* rights. Minutes that reflect that the requirements of *Boykin* were complied with are sufficient. *State v. Roland*, 49,660 (La. App. 2 Cir. 2/27/15), 162 So. 3d 558, *writ denied*, 15-0596 (La. 2/19/16), 186 So. 3d 1174; *State v. Warfield*, 37,616 (La. App. 2 Cir. 10/29/03), 859 So. 2d 307, *writ denied*, 04-0152 (La. 2/4/05), 893 So. 2d 87; *State v. Wade*, 36,295 (La. App. 2 Cir. 10/23/02), 832 So. 2d 977, *writ denied*, 02-2875 (La. 4/4/03), 840 So. 2d 1213. Further, any failure of the trial court to explore all of the possible ramifications of a future conviction does not affect the core *Boykin* rights and does not invalidate the offense as a predicate. *State v. Guzman*, 99-1528 (La. 05/16/00), 769 So. 2d 1158; *State v. Roland*, *supra*.

A reviewing court applies a two-prong test to determine whether a sentence is excessive. First, we examine the record to determine if the trial court used the criteria set forth in La. C. Cr. P. art. 894.1. The trial court is

not required to list every aggravating or mitigating circumstance so long as the record reflects adequate consideration of the guidelines of the article. *State v. Smith*, 433 So. 2d 688 (La. 1983); *State v. Davis*, 52,453 (La. App. 2 Cir. 2/27/19), 265 So. 3d 1194; *State v. Boehm*, 51,229 (La. App. 2 Cir. 4/5/17), 217 So. 3d 596. The court shall state for the record the considerations taken into account and the factual basis therefor in imposing sentence. La. C. Cr. P. art. 894.1(C). The goal of La. C. Cr. P. art. 894.1 is an articulation of the factual basis for the sentence, not simply a mechanical compliance with its provisions. *State v. Davis, supra*. Where the record clearly shows an adequate factual basis for the sentence, resentencing is unnecessary even where there has not been full compliance with La. C. Cr. P. art. 894.1. *State v. Davis, supra*; *State v. Fontenot*, 49,835 (La. App. 2 Cir. 5/27/15), 166 So. 3d 1215.

The defendant's personal history (age, family ties, marital status, health, employment record), prior criminal record, seriousness of the offense, and the likelihood of rehabilitation are important elements to consider. *State v. Jones*, 398 So. 2d 1049 (La. 1981); *State v. Davis, supra*; *State v. Boehm, supra*. There is no requirement that specific matters be given any particular weight at sentencing. *Id.*

Second, a sentence violates La. Const. art. I, § 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. Dorthey*, 623 So. 2d 1276 (La. 1993); *State v. Davis, supra*. 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*, 01-0467 (La. 1/15/02), 805 So. 2d 166; *State v. Boehm, supra*.

A trial court has wide discretion to sentence within the statutory limits. Absent a showing of manifest abuse of that discretion, a sentence will not be set aside as excessive. On review, an appellate court does not determine whether another sentence may have been more appropriate, but whether the trial court abused its discretion. *State v. Davis, supra*; *State v. Boehm, supra*.

Application of law to facts

(1) The record contains the following exchange:

> THE COURT: All right. Let me just ask, are you-all asking to not do a sentencing on the underlying charge before the habitual offender hearings?
>
> MS. CREAL: Yes, sir.
>
> THE COURT: Okay. Is that agreeable, Ms. Harried?
>
> MS. HARRIED: Yes, Your Honor.
>
> THE COURT: Okay.

There was no requirement that the trial court sentence Defendant for carjacking, vacate that sentence, and then sentence him as a habitual offender, since the State had already filed the multi-offender bill. Furthermore, La. R.S. 15:529.1(D)(3) provides that a trial court must vacate a previous sentence *if already imposed*. The trial court's failure to impose a sentence on the carjacking charge was not erroneous, and, as noted above, was agreed to by both sides.

(2) Defendant had three prior felony convictions:

> 1. Attempted simple robbery, committed on August 17, 2000. Defendant pled guilty on May 28, 2002, and his probation was revoked on January 21, 2004.
>
> 2. Possession of a firearm by a convicted felon, committed on February 5, 2006. Defendant pled guilty on October 31, 2006.

3. Possession of a firearm by a convicted felon, committed on May 24, 2009. Defendant pled guilty on November 4, 2010.

With each conviction, the minutes reflect that Defendant was present with counsel and a sign language interpreter. The minutes for each felony state that Defendant was advised of his rights under *Boykin*, which is sufficient for his adjudication as a fourth-felony offender. Furthermore, there was no objection to the evidence adduced at the habitual offender hearing, so there was no need to introduce transcripts of the three prior guilty pleas.

(3) The trial court completed a thorough review of the aggravating and mitigating factors from La. C. Cr. P. art. 894.1. The trial court noted that it was concerned regarding the length of Defendant's sentence, his likelihood of recidivism and his need for correctional treatment. The trial court found that the evidence was compelling and overwhelming regarding Defendant's guilt in his commission of the instant offense. The trial court further stated that the crime manifested deliberate cruelty, and that Defendant exploited and targeted Calhoun because he believed Calhoun to be more vulnerable as a victim because of his lifestyle.

The trial court pointed out that Defendant got a thing of value for his crime, namely, Calhoun's car. The trial court stated that Defendant used his friendship with Calhoun and Calhoun's interest in him to exploit and manipulate Calhoun. The trial court noted that Calhoun felt threatened and menaced, and was aware of the disparity in size between himself and Defendant; he also feared that Defendant was armed. The trial court noted that Calhoun suffered a significant economic loss given his financial situation at the time. The trial court found that Defendant's history included instances of violence, including a simple robbery conviction and an

unadjudicated domestic abuse battery. The trial court found that the most aggravating factor was Defendant's exploitation of Calhoun's kindness.

The trial court noted that Defendant did not cause or threaten serious harm to Calhoun. The trial court did observe, however, that had Calhoun resisted, he likely would have suffered serious harm. The trial court stated that Defendant was unlikely to respond to probationary treatment, because he had lesser sentences and probation and parole opportunities of which he had not taken advantage. The trial court found that Defendant's deafness did not bear on the offense one way or the other. The trial court stated that, given Defendant's criminal history, he was undeserving of the minimum sentence, but because there were no physical injuries in the case, the maximum sentence would have been excessive. The trial court sentenced Defendant to 35 years at hard labor without benefits, with credit for time served. Defendant was advised of his appeal and post-conviction relief timelines.

The record shows the trial court's compliance with the requirements of La. C. Cr. P. art. 894.1. Defendant's 35-year sentence was not excessive given his criminal history and the exploitative nature of his crime against Calhoun. *See State v. Bess*, 45,358 (La. App. 2 Cir. 8/11/10), 47 So. 3d 524, *writ denied*, (La. 02/25/11), 58 So. 3d 456; *see also State v. Boyd*, 14-0408 (La. App. 4 Cir. 07/25/18), __ So. 3d __, 2018 WL 3616337; *State v. Bordelon*, 09-1245 (La. App. 3 Cir. 05/05/10), 37 So. 3d 480, *writ denied*, 10-1745 (La. 02/04/11), 56 So. 3d 990. Defendant's sentence is neither an abuse of discretion nor constitutionally excessive. This assignment of error is without merit.

CONCLUSION

For the foregoing reasons, Defendant's conviction and sentence are affirmed.