Fifth Circuit Court of Appeal
State of Louisiana

No. 25-KA-105

STATE OF LOUISIANA

versus

ERIS BRIZUELA-GARCIA

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 24-4039, DIVISION "D"
HONORABLE JACQUELINE F. MALONEY, JUDGE PRESIDING

December 15, 2025

SCOTT U. SCHLEGEL

JUDGE

Panel composed of Judges Susan M. Chehardy,
Stephen J. Windhorst, and Scott U. Schlegel

AFFIRMED

SUS
SMC
SJW

TRUE COPY

LINDA TRAN
DEPUTY CLERK

COUNSEL FOR PLAINTIFF/APPELLEE,
STATE OF LOUISIANA

Honorable Paul D. Connick, Jr.
Juliet L. Clark
Thomas J. Butler

COUNSEL FOR DEFENDANT/APPELLANT,
ERIS BRIZUELA-GARCIA

Chad M. Ikerd

SCHLEGEL, J.

Defendant, Eris Brizuela-Garcia, appeals his conviction and sentence for one count of aggravated assault upon a peace officer in violation of La. R.S. 14:37.2. For the reasons that follow, we affirm his conviction and sentence.

Procedural History

On August 8, 2024, the Jefferson Parish District Attorney filed a bill of information charging defendant, Eris Brizuela-Garcia, with four counts of aggravated assault upon a peace officer in violation of La. R.S. 14:37.2. Defendant was arraigned on August 13, 2024, and pled not guilty to all counts. On December 3, 2024, the case was tried before a six-person jury. Defendant was found guilty as charged on count one, involving Jefferson Parish Sheriff's Officer ("JPSO") Deputy G. Gonzalez, and not guilty on counts two through four, involving JPSO Deputies C. Fairweather, M. Wheelahan, and K. Persad. On December 18, 2024, the trial court sentenced defendant to five years imprisonment on count one.[1] On January 6, 2025, defendant filed a timely Motion for Appeal, which was granted the next day.

Facts

Deputy Fairweather testified that on July 4, 2024, at approximately 11:40 p.m., he and three other deputies responded to a disturbance involving a knife at 2505 Wychwood Drive in Metairie. He testified that dispatch had advised that a Hispanic male wearing a green shirt and grayish pants was highly intoxicated, carrying knives, and shoving people. Later on-scene, the deputies also received reports that the suspect was damaging cars. Deputy Fairweather stated that when

[1] Simultaneously with the pending case (District Court Case No. 24-4039), the trial court tried District Court Case No. 24-4040, which consisted of four misdemeanor counts of resisting an officer and one count of disturbing the peace. The trial court found defendant guilty on each of these misdemeanor charges, and sentenced defendant to six months on each of the five counts, to run concurrently with the sentence in District Court Case No. 24-4039.

they arrived on the scene it became evident that there was a language barrier because the residents were only speaking Spanish. Deputy Gonzalez though was able to speak Spanish and after a brief interaction, three of the individuals on-scene pointed across the street. Deputy Gonzalez then sprinted across the street, and the other officers followed.

Deputy Fairweather testified that as he approached, he saw the suspect, later identified as defendant, with "two knives in his hand[s]" facing him. He heard Deputy Gonzalez shout commands to defendant in Spanish. Deputy Fairweather testified that he ran up with his gun drawn and shouted as well to defendant, but in English, to "get on the ground" and "drop the knives." He also asked other officers to get a taser, which he explained was a less lethal means to engage the subject.

Deputy Fairweather testified that at one point, defendant tripped and fell but then got back up. He said that defendant remained aggressive and was flailing his arms unpredictably while still maintaining possession of both knives. This prevented the officers from being able to close the distance and effectively detain defendant at that point. Deputy Wheelahan then fired a taser without success.

Deputy Fairweather testified that a short time later, another taser was deployed bringing the defendant down to the ground. He explained they had to continue to use the taser because it did not completely prevent defendant from moving, and both he and Deputy Gonzalez were on knee level with defendant and within arm's reach of both of the knives. Defendant had a steak knife in his right hand and an ice cream scooper and a butter knife in his left hand. He stated that he held his gun to defendant's head while Deputy Gonzalez forcibly pried the steak knife from defendant's hand. They then placed defendant in handcuffs. Deputy Fairweather testified that he was wearing a body-worn camera that recorded the events that night. Deputy Fairweather's body camera footage was admitted into evidence and played for the jury.

Deputy Gonzalez, who is fluent in Spanish, testified that he was wearing a body camera, which recorded the incident and was played for the jury. He testified that when he and the other officers arrived at the scene, some individuals pointed in the direction where the suspect went. The video showed that he ran after the defendant. Deputy Gonzalez followed and told him in Spanish to drop the knives. Defendant had two knives and was walking towards him flailing his arms. One of the knives was a "pretty large steak knife." As a result, Deputy Gonzalez pulled his gun out. The suspect then turned away from him and the other officers and started running. He was concerned for all of the officers' safety and for the safety of the neighbors standing outside. He acknowledged that he was frightened as the suspect was close to them and explained that a person can close a distance very fast with a knife. He believed that if someone had approached defendant, that person would have been stabbed or cut.

Deputy Gonzalez testified that there were multiple times throughout the incident when the situation was intense. Defendant came toward him, flailed his arms with the knives pointed toward him and then ran, but kept stopping, turning toward the officers, turning back around, and running away. He testified he was frightened and felt in so much danger that he came close to having to use his firearm to stop defendant. The video showed that defendant fell again after the officers used a taser. Deputy Gonzalez thought defendant was unconscious from the fall. Defendant presented as being drunk and intoxicated during the incident.

Deputy Persad testified that he and other deputies arrived on the scene, after which a group of Hispanic males started pointing across the street. He said that one of the deputies saw the suspect and started sprinting toward the suspect. He and the other deputies followed. He observed defendant with a large butcher knife. It also seemed that defendant had knives in both of his hands. Defendant approached the Spanish-speaking deputy while flailing the knives around in his

hands. He and the other deputies then walked backwards because they did not know what defendant was going to do. He said that defendant ignored their commands to drop the knife, turned around, and sprinted away. He said that he and the other deputies had their weapons out because defendant had his knife out. Deputy Persad stated that at one point, defendant fell, sat on the ground, and still flailed the knives around. Defendant got up and continued running. Deputy Persad explained that they had to do something to make everyone safe, including the civilians standing around, because they did not know what defendant was going to do. He testified that he took out his taser and deployed it, after which defendant fell backwards, and they were able to disarm him. Deputy Persad identified Deputy Wheelahan's body-camera video, which was admitted into evidence and played for the jury.

Defendant also testified at the trial, during which he acknowledged that he was the person in the video holding two knives. He said that he did not know where the knives came from, did not remember anything, and was "totally drunk."

Law and Analysis

Defendant raises two assignments of error on appeal. First, defendant argues that the State failed to sufficiently prove that he was guilty of aggravated assault upon a peace officer. Second, defendant argues that his trial counsel provided ineffective assistance of counsel.

A. *Sufficiency of the Evidence*

Defendant argues the evidence was insufficient to support his conviction of aggravated assault upon a peace officer, namely, Deputy Gonzalez. He contends that the four deputies were never in real danger and asserts that the jury correctly found that Deputies Fairweather, Persad, and Wheelahan were not assaulted. Defendant argues the evidence was not sufficient to prove Deputy Gonzalez was in fear of being battered any more than the other deputies. He points out that due to

the language barrier, the deputies did not have a chance to investigate when they arrived as to whether he was trying to harm anyone or whether he was just drunk and walking around. Defendant asserts that the four officers approached and took aggressive postures toward him with their guns drawn. He contends that although he initially turned and walked toward the officers, when they approached him yelling commands, he ran away from them and tried not to have any contact with them.

The State responds that viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of aggravated assault upon a peace officer where the evidence established that defendant intentionally placed Deputy Gonzalez, a peace officer acting in the course and scope of his duties, in reasonable apprehension of receiving a battery.

The constitutional standard for sufficiency of the evidence is whether, upon viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could find that the State proved all of the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); *State v. Gassenberger*, 23-148 (La. App. 5 Cir. 12/20/23), 378 So.3d 820, 829. This directive that the evidence be viewed in the light most favorable to the prosecution requires the reviewing court to defer to the actual trier of fact's rational credibility calls, evidence weighing, and inference drawing. *Gassenberger*, *supra*. This deference to the fact finder does not permit a reviewing court to decide whether it believes a witness or whether the conviction is contrary to the weight of the evidence. *Id.* Further, a reviewing court errs by substituting its appreciation of the evidence and the credibility of witnesses for that of the fact finder and overturning a verdict on the basis of an exculpatory hypothesis of innocence presented to, and rationally rejected by, the jury. *Id.* As a result, under the *Jackson* standard, a review of the record for sufficiency of the evidence does

not require the reviewing court to determine whether the evidence at trial established guilt beyond a reasonable doubt, but whether, upon review of the whole record, any rational trier of fact would have found guilt beyond a reasonable doubt. *Id*.

Evidence may be direct or circumstantial. *State v. Robertson*, 22-363 (La. App. 5 Cir. 3/29/23), 360 So.3d 582, 590. When circumstantial evidence is used to prove the commission of the offense, La. R.S. 15:438 provides, ". . . assuming every fact to be proved that the evidence tends to prove, in order to convict, it must exclude every reasonable hypothesis of innocence." On appeal, the reviewing court does not determine if another possible hypothesis suggested by the defendant could afford an exculpatory explanation of the events. *State v. Williams*, 14-882 (La. App. 5 Cir. 5/14/15), 170 So.3d 1129, 1136, *writ denied*, 15-1198 (La. 5/27/16), 192 So.3d 741. Instead, the appellate court must evaluate the evidence in a light most favorable to the State and determine whether the possible alternative hypothesis is sufficiently reasonable that a rational juror could not have found proof of guilt beyond a reasonable doubt. *Id.*

The credibility of a witness is within the sound discretion of the trier of fact, who may accept or reject, in whole or in part, the testimony of any witness. *State v. Hutchinson*, 22-536 (La. App. 5 Cir. 8/18/23), 370 So.3d 769, 781, *writ denied*, 23-1296 (La. 2/27/24), 379 So.3d 662. In the absence of internal contradiction or irreconcilable conflicts with physical evidence, the testimony of one witness, if believed by the trier of fact, is sufficient to support a conviction. *Id.* at 782.

Defendant was convicted of aggravated assault upon a peace officer, specifically, Deputy Gonzalez. Aggravated assault upon a peace officer is defined as "an assault committed upon a peace officer who is acting in the course and scope of his duties." La. R.S. 14:37.2(A). Assault is defined as "an attempt to commit a battery, or the intentional placing of another in reasonable apprehension

of receiving a battery." La. R.S. 14:36. Battery is defined in pertinent part as "the intentional use of force or violence upon the person of another." La. R.S. 14:33.

At the trial, Deputy Gonzalez testified that he was on duty and dispatched to the scene of the incident. He testified that defendant advanced toward him with knives in his hands while moving the knives in a stabbing and flailing motion. This was also shown on the body-camera footage of three separate deputies involved in the incident. Deputy Gonzalez further testified that defendant refused to drop the knives when instructed to do so, and that defendant acted erratically by stopping, moving the knives up and down, and then running away. Deputy Gonzalez testified that he was frightened due to defendant's close proximity while he was flailing his arms with a large knife.

Thus, we find that viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found that the State proved all of the essential elements of the crime of aggravated assault of a peace officer beyond a reasonable doubt.

B. *Ineffective Assistance of Counsel*

In his second assignment of error, defendant argues that his trial counsel provided ineffective assistance of counsel at sentencing. He asserts that his counsel effectively provided no assistance at all in that she: (1) did not offer mitigation to the court; (2) did not object to the sentence or note the court's failure to consider La. C.Cr.P. art. 894.1 factors; (3) failed to file a motion to reconsider sentence, which could have preserved some of the errors in the trial court's ruling; and (4) did not request a pre-sentence investigation.

Under the Sixth Amendment to the United States Constitution and Article I, § 13 of the Louisiana Constitution, a defendant is entitled to effective assistance of counsel. *State v. Casimer*, 12-678 (La. App. 5 Cir. 3/13/13), 113 So.3d 1129, 1141. To prove ineffective assistance of counsel, a defendant must satisfy the two-

prong test set forth in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). *Id*. Under the *Strickland* test, the defendant must show: (1) that counsel's performance was deficient, that is, that the performance fell below an objective standard of reasonableness under prevailing professional norms; and (2) that the deficient performance prejudiced the defense. *Id*. An error is considered prejudicial if it was so serious as to deprive the defendant of a fair trial, or "a trial whose result is reliable." *Strickland*, 466 U.S. at 687, 104 S.Ct. at 2064. To prove prejudice, the defendant must demonstrate that, but for counsel's unprofessional errors, the outcome of the trial would have been different. *Id.*, 466 U.S. at 694, 104 S.Ct. at 2068.

Generally, a claim of ineffective assistance of counsel is most appropriately addressed through an application for post-conviction relief, rather than on direct appeal so as to afford the parties an adequate record for review. *State v. Robertson*, 08-297 (La. App. 5 Cir. 10/28/08), 995 So.2d 650, 659, *writ denied sub nom. State ex rel. Robertson v. State*, 08-2962 (La. 10/9/09), 18 So.3d 1279. However, when the record contains sufficient evidence to rule on the merits of the claim and the issue is properly raised by an assignment of error on appeal, it may be addressed in the interest of judicial economy. *State v. Grimes*, 09-2 (La. App. 5 Cir. 5/26/09), 16 So.3d 418, 426, *writ denied*, 09-1517 (La. 3/12/10), 28 So.3d 1023. We find that the record is adequate to address defendant's claims.

The failure to file a motion to reconsider sentence, or to state the specific grounds upon which the motion is based, limits a defendant to a review of the sentence for unconstitutional excessiveness only. *State v. Adams*, 23-427 (La. App. 5 Cir. 4/24/24), 386 So.3d 676, 683; *State v. McKinney*, 19-380 (La. App. 5 Cir. 12/26/19), 289 So.3d 153, 166. Further, when the specific grounds for objection to the sentences, including alleged non-compliance with La. C.Cr.P. art. 894.1, are not specifically raised in the trial court, then these issues are not

included in the bare review for unconstitutional excessiveness, and the defendant is precluded from raising these issues on appeal. *Adams*, 386 So.3d at 683; *State v. Clark*, 19-518 (La. App. 5 Cir. 6/24/20), 296 So.3d 1281, 1291, *writ denied*, 21-62 (La. 3/9/21), 312 So.3d 585. Here, defendant's trial counsel did not orally object to the sentence and did not file a motion to reconsider sentence. Consequently, defendant is correct that he cannot raise certain grounds on appeal as to sentencing.

Nevertheless, this Court routinely reviews sentences for unconstitutional excessiveness, even in the absence of a defendant's timely objection or the filing of a motion to reconsider sentence. *State v. Taylor*, 18-126 (La. App. 5 Cir. 10/17/18), 258 So.3d 217, 228, *writ denied*, 18-1914 (La. 5/20/19), 271 So.3d 200. This Court may consider defendant's specific objections to the sentence to properly assess his claim of ineffectiveness of counsel. *See State v. King*, 00-1434 (La. App. 5 Cir. 5/16/01), 788 So.2d 589, 593, *writ denied*, 01-2456 (La. 9/20/02), 825 So.2d 1157 (to assess the defendant's claim of ineffective assistance of counsel, this Court considered the defendant's argument that the trial court failed to articulate reasons for his sentence under La. C.Cr.P. art. 894.1, even though the argument was not preserved on appeal).

With respect to the argument that trial counsel failed to file a motion to reconsider sentence, this Court has recognized that the mere failure to file a motion to reconsider sentence does not in and of itself constitute ineffective assistance of counsel. *State v. Fairley*, 02-168 (La. App. 5 Cir. 6/26/02), 822 So.2d 812, 816. However, if a defendant can "show a reasonable probability that, but for counsel's error, his sentence would have been different," a basis for an ineffective assistance claim may be found. *Id*. Here, defendant has failed to show that trial counsel performed deficiently in failing to file a motion to reconsider sentence or that there is a reasonable probability that, but for counsel's failure to do so the sentence would have been different.

The Eighth Amendment to the U.S. Constitution and Article I, § 20 of the Louisiana Constitution prohibit the imposition of excessive punishment. *State v. Adams*, 23-427 (La. App. 5 Cir. 4/24/24), 386 So.3d 676, 683. A sentence is considered excessive, even if it is within the statutory limits, if it is grossly disproportionate to the severity of the offense, or imposes needless and purposeless pain and suffering. *Id*.

According to La. C.Cr.P. art. 881.4(D), the appellate court shall not set aside a sentence for excessiveness if the record supports the sentence imposed. *Id.* In reviewing a sentence for excessiveness, the reviewing court shall consider the crime and the punishment in light of the harm to society and gauge whether the penalty is so disproportionate as to shock the court's sense of justice, while recognizing the trial court's wide discretion. *Id*. In reviewing a trial court's sentencing discretion, three factors are considered: (1) the nature of the crime; (2) the nature and background of the offender; and (3) the sentence imposed for similar crimes by the same court and other courts. *State v. Kelson*, 23-274 (La. App. 5 Cir. 12/27/23), 379 So.3d 779, 784. However, there is no requirement that specific matters be given any particular weight at sentencing. *Id.*

In determining a sentence, a trial court should consider the defendant's personal history such as age, family ties, marital status, health, employment record, as well as his prior criminal record, seriousness of the offense and the likelihood of rehabilitation in determining an appropriate sentence. *Adams*, 386 So.3d at 686. A trial judge is in the best position to consider the aggravating and mitigating circumstances of a particular case and therefore, is given broad discretion when imposing a sentence. *State v. Barnes*, 23-208 (La. App. 5 Cir. 12/27/23), 379 So.3d 196, 204, *writ denied*, 24-136 (La. 9/24/24), 392 So.3d 1141.

Defendant was convicted of aggravated assault upon a peace officer, Deputy Gonzalez, in violation of La. R.S. 14:37.2. The sentencing range for this statute is

a fine of not more than five thousand dollars, or imprisonment for not less than one year nor more than ten years, with or without hard labor, or both. La. R.S. 14:37.2(B). Here, the trial court sentenced defendant to five years imprisonment at hard labor, and no fine was imposed. Prior to imposing sentence, the trial judge stated:

> Sir, I don't know where you are from, but in Jefferson Parish we take it very seriously the safety of our policeman [sic]. The men and woman [sic] who work for the Sheriff's Office risk their lives to protect the people that live here. So not only did you create a disturbance in the neighborhood where people were celebrating our Independence Day you caused four policeman [sic] more than that to have to come out to ensure the safety of those people and you were so drunk that you don't even remember what you did.
>
> You assaulted them with a steak knife, you refused to comply with their instructions and you caused Officer Gonzalez to have to decide whether or not he would shoot and kill you that night and you are lucky to be alive, sir.
>
> At this time based on the seriousness of what you did the Court is going to sentence you in Case No. 24-4039 on each count – I'm sorry – I think it was Count 1. . . . Count 1 to five years in the Department of Corrections. The Court will note that this is a crime of violence.

As discussed above, deputies had to respond to a disturbance late on the Fourth of July after dispatch advised that a Hispanic male was highly intoxicated, carrying knives, and shoving people.

Deputy Gonzalez explained that the situation was intense because defendant came toward him, flailed his arms with the knives pointed toward him and then ran, but kept stopping, turning toward them, turning back around, and running away. Deputy Gonzalez testified he was frightened and felt so much danger that he came close to having to use his firearm to stop defendant. He also believed that if someone had gotten close to defendant, that person would have been stabbed or cut.

As to the nature and the background of the offender, at a pretrial hearing, the prosecutor stated that defendant had no prior convictions that he knew of. The

prosecutor further stated that "when he was arrested immigration must have been notified and so it's on his rap sheet that he's an immigration fugitive." Defense counsel added that defendant was from Honduras, "So this means he's getting deported." Defendant was 36 years old at the time of the offense.

As to sentences imposed for similar crimes, in *State v. Wiltz*, 08-1441 (La. App. 4 Cir. 12/16/09), 28 So.3d 554, 561, *writ denied*, 10-103 (La. 11/12/10), 49 So.3d 885, involving a firearm, the trial court imposed the maximum ten-year sentence, stating the record showed an adequate factual basis for the sentence and pointing out the officer testified that as he pursued the defendant for fleeing the location of the traffic stop, the defendant turned and pointed a gun at him twice.

We conclude that under the circumstances, defendant's sentence was not constitutionally excessive. When considering the crime and the punishment in light of the harm to society, the penalty is not so disproportionate as to shock the Court's sense of justice.

Defendant also complains that the trial court failed to state reasons for sentencing him as required by La. C.Cr.P. art. 894.1(C), which requires the trial judge to state for the record the considerations taken into account and the factual basis when imposing sentence. But when there is an adequate factual basis for the sentence contained in the record, the trial court's failure to articulate every circumstance listed in La. C.Cr.P. 894.1 does not require a remand for resentencing. *Fairley*, 822 So.2d at 816-17.

In the instant case, the trial court's findings at the time of sentencing were an adequate factual basis for the sentence imposed to comply with La. C.Cr.P. 894.1.

Defendant further argues that the trial court erred in not ordering a presentence investigation report ("PSI").

Article 875(A)(1) of the Louisiana Code of Criminal Procedure provides in relevant part that "[i]f a defendant is convicted of a felony offense . . . the court

may order the Department of Public Safety and Corrections, division of probation and parole, to make a presentence investigation." The use of the word "may" in this article reflects that ordering a presentence investigation is discretionary with the trial court. *State v. Robertson*, 23-525 (La. App. 5 Cir. 10/23/24), 398 So.3d 767, 778. Therefore, the failure to order a PSI was not error in this case.

With respect to the allegation that defense counsel failed to present mitigating evidence to the trial court, defendant does not specify what such evidence would consist of. As such, defendant has not established that trial counsel's performance was deficient under *Strickland*.

For these reasons, we conclude that defendant has not demonstrated that he received ineffective assistance of counsel. Consistent with this Court's prior decisions, defendant's excessiveness claim has been addressed even in the absence of a motion for reconsideration. Further, defendant has not shown a reasonable probability that, but for his attorney's failure to file or move for reconsideration of his sentence, his sentence would have been different.

Errors Patent Review

We reviewed the record for errors patent according to La. C.Cr.P. art. 920; *State v. Oliveaux*, 312 So.2d 337 (La. 1975); and *State v. Weiland*, 556 So.2d 175 (La. App. 5 Cir. 1990). We found no errors patent.

Decree

For the foregoing reasons, we affirm defendant's conviction and sentence.

AFFIRMED

FIFTH CIRCUIT
101 DERBIGNY STREET (70053)
POST OFFICE BOX 489
GRETNA, LOUISIANA 70054
www.fifthcircuit.org

(504) 376-1400
(504) 376-1498 FAX

NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY **DECEMBER 15, 2025** TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

Curtis B. Pursell

CURTIS B. PURSELL
CLERK OF COURT

25-KA-105

E-NOTIFIED
24TH JUDICIAL DISTRICT COURT (CLERK)
HONORABLE JACQUELINE F. MALONEY (DISTRICT JUDGE)
JULIET L. CLARK (APPELLEE)
THOMAS J. BUTLER (APPELLEE)
CHAD M. IKERD (APPELLANT)

MAILED
HONORABLE PAUL D. CONNICK, JR.
(APPELLEE)
DISTRICT ATTORNEY
TWENTY-FOURTH JUDICIAL DISTRICT
200 DERBIGNY STREET
GRETNA, LA 70053