Fifth Circuit Court of Appeal
State of Louisiana

No. 25-KA-400

STATE OF LOUISIANA

versus

LARRY DAVIS

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 19-3252, DIVISION "A"
HONORABLE RAYMOND S. STEIB, JR., JUDGE PRESIDING

February 25, 2026

JOHN J. MOLAISON, JR.

JUDGE

Panel composed of Judges Marc E. Johnson,
Stephen J. Windhorst, and John J. Molaison, Jr.

AFFIRMED; REMANDED WITH INSTRUCTIONS

JJM
MEJ
SJW

COUNSEL FOR DEFENDANT/APPELLANT,
LARRY DAVIS

Holli A. Herrle-Castillo

COUNSEL FOR PLAINTIFF/APPELLEE,
STATE OF LOUISIANA

Honorable Paul D. Connick, Jr.
Monique D. Nolan
Thomas J. Butler
Brendan Bowen
Theresa King

MOLAISON, J.

The defendant/appellant, Larry Davis, appeals his convictions of armed robbery with a firearm, and claims his sentences are excessive, his statement to police should have been suppressed, and he had ineffective assistance of counsel. For the reasons explained below, we affirm the defendant's convictions and sentences.

PROCEDURAL HISTORY

On May 29, 2019, the Jefferson Parish District Attorney charged Larry Davis with four counts of armed robbery with a firearm; he pled not guilty. The defense filed numerous counseled and *pro se* pleadings. The trial court granted the defendant's request for a sanity commission. On August 21, 2019, the court found him incompetent but determined he was competent to proceed on May 20, 2020. The court granted another motion to assess the defendant's sanity at the time of the offense and found him legally sane at the time of the offense. On February 29, 2024, the defense counsel requested a re-examination of Davis' competency, and he was found competent on May 15, 2024. On July 9, 2024, the defense counsel filed a Notice of Amended Plea, changing the defendant's pleas to not guilty and not guilty by reason of insanity. The court found Davis competent on July 10, 2024, and he entered the amended pleas.

The trial court denied the defendant's motion to suppress his statement on January 19, 2023. Successive motions were filed seeking to suppress the statement. The trial court reiterated on October 16, 2024, that the motion to suppress statement had been previously denied.

Prior to jury selection on May 12, 2025, the defense counsel re-urged the motion to suppress statement, which was taken up and again denied. The jury found Davis guilty on all counts on May 14, 2025.

On May 30, 2025, the trial court sentenced the defendant to four consecutive terms of twenty-five years imprisonment at hard labor for each count, with an additional five years on each count for the firearm enhancement. The defendant filed a timely appeal, asserting three assignments of error.

FACTS

On March 28, 2019, the defendant Larry Davis and Israel Freeman went on a robbery spree in Jefferson and St. Charles parishes. Mr. Freeman drove a white truck while the defendant used a firearm to rob Walgreens in Metairie, Dollar General in Westwego, Dollar General in Avondale, and Dollar General in Luling. The defendant wore the same clothes during each robbery. Police found his fingerprints on the Walgreens cash register drawer. After a chase, officers apprehended the defendant, and he admitted his involvement in the robberies.

At trial, Latrice Holmes testified that she was working as a cashier at Walgreens, and Mark McCloskey was in the checkout line, when a man pointed a gun at her and told her to give him the money. Ms. Holmes explained that she could not open the register until Mr. McCloskey removed his credit card from the reader. Ms. Holmes told Mr. McCloskey to remove his credit card. She opened the drawer and handed over the cash tray. As she bent over to pick up some money that had fallen, the man pointed the gun at her head.

Mr. McCloskey testified that the man demanded his credit card and money from Ms. Holmes. Mr. McCloskey put his credit card on the counter. He elaborated that Ms. Holmes, who was shaking, struggled to open the register but ultimately handed the man the tray of cash. Mr. McCloskey testified that the man put the gun in his pants, took the tray, and quickly left the store.

Jefferson Parish Sheriff's Office (JPSO) deputy Joseph Venta responded to a call reporting an armed robbery at Walgreens on Veterans Boulevard in Metairie

on March 28, 2019. Surveillance videos showed a white truck parked outside of the Walgreens and someone leaving the truck and entering Walgreens.

JPSO Detective Ryan Vaught testified that the cash register till was recovered several blocks away from the Walgreens. The till was processed for fingerprints; it contained fingerprints from a cashier, Mr. Freeman, and the defendant.[1]

While investigating the Walgreens robbery, police learned of an armed robbery at a Dollar General in Westwego. Tyrielle Stevenson, who worked as a cashier at that Dollar General testified that at the beginning and end of every shift, the money in the till was counted and recorded on a piece of paper and initialed. On March 28, 2019, a man walked to the register and asked for a pack of cigarettes. When Ms. Stevenson asked for the man's identification, the man pulled out a gun and demanded money. She got the key, opened the register, and gave the till to the man.[2]

Sergeant Edgardo Castro went to the Westwego Dollar General, spoke to witnesses, and reviewed video surveillance. Sergeant Castro and Detective Vaught reviewed surveillance videos that depicted the suspect's vehicle, a white Chevy truck, pull up and the suspect exiting the truck. The suspect went into the store, wearing the same clothes as in the Walgreens robbery, approached the clerk, and demanded cigarettes while holding a silver handgun. The suspect got the cash register till from the clerk, then entered the front passenger side of the white truck. Detective Vaught testified that the two robberies both involved a white Chevy Colorado pickup truck, the same suspect description and clothing, and a small silver semiautomatic handgun. Once Detective Vaught identified the suspects'

[1] Nikki Wilson, a latent print examiner, testified that she submitted a latent print from the bottom of a cash register till into "AFIS." She then compared the print to the print AFIS found, and she concluded that the latent print matched defendant.

[2] Ms. Stevenson selected the defendant's photograph from the lineup.

vehicle, he issued a "be on the lookout" alert so deputies knew to stop it and detain its occupants.

Sergeant Castro and Detective Vaught later learned of a robbery at a Dollar General in Avondale. The video from that Dollar General showed a white truck and the suspect, who was a Black male, wearing all black clothing and light-colored shoes, produce a small silver semiautomatic handgun and demand the till. Detective Vaught testified that in the Avondale Dollar General video, the suspect is seen with the same towel draped over his shoulder that had been covering his head in the Walgreens video. The victim of the robbery of the Dollar General in Avondale selected the defendant's image from a photo lineup, stating she was ninety percent confident in her choice. Detective Vaught stated the till from a robbery on the Westbank was recovered in an open field.

A deputy saw the white truck suspected of involvement in the robberies on the Westbank Expressway and a chase ensued to the Eastbank. The vehicle came to a stop, and the occupants fled on foot. Sergeant Castro arrested the defendant, who was "still wearing the same clothes." Sergeant Castro reiterated that the suspect wore black sweatpants with a gray stripe, a black sweatshirt, and red and black Nike Air Max shoes, which was the same clothing worn by the suspect in the surveillance videos.

Detective Vaught executed a search warrant for the truck and found a backpack, loose packs of unopened cigarettes, a roll of coins, loose coins, and clothing. Detective Vaught believed the unopened cigarettes and coins came from the robberies. A register balancing sheet with Ms. Stevenson's name on it was also in the truck.

After being advised of his rights, the defendant was interviewed by Sergeant Justin Jerry and Detective Vaught. Detective Vaught asked if the defendant had any addictions or problems. The defendant replied that he had been "smoking a

little coke" and drinking with the driver of the vehicle. Throughout the interview, the defendant repeatedly mentioned that he was under the influence at the time of the events, that he was enticed by the driver, and that he was not in the right frame of mind. He stated that he and the driver robbed that store together, but he could not recall the name of the store, nor could he remember the last store robbed.

The defendant could not recall the name of the driver but recognized him from prior encounters. When asked how he got the weapon, the defendant said the driver had a gun and told him they should "get these people for some money." The defendant said he robbed someone in the store of sixty or seventy dollars and that they put the money in his hand. He explained, "Once you point the gun at them, they give you the money out of the register." Detective Vaught attempted to direct the defendant to this specific incident. Defendant said, "When you point a gun at somebody and you tell them to give you the money, they're going to hand you the money." When asked if that was what happened that night, the defendant agreed.

The defendant repeatedly asserted that he could only remember two Dollar Generals. Detective Vaught presented a photograph to the defendant, who confirmed that the image depicted himself, acknowledging that identification was difficult because he had a towel over his head. He said he asked for the money and got into a truck after he got the money. The defendant was shown another photograph, which he agreed showed the black item he was given. He said the driver threw this "black thing" away.

Detective Vaught was contacted by the St. Charles Parish Sheriff's Office who was investigating a robbery with similar characteristics. Two St. Charles Parish deputies testified as to the robbery of the Dollar General in Luling—a Black male, dressed in black wearing white shoes asked for cigarettes, pulled a silver gun, and demanded money from the register. The cashier could not open the register and the man left the store with cigarettes. The deputies reviewed videos

that showed the robbery and the robber exiting the store and entering a white pickup truck.

Dr. Rafael Salcedo, an expert in forensic psychology, who was appointed to evaluate the defendant regarding his mental state at the time of the alleged offenses, testified that the defendant had a well-documented history of major depression, anxiety, and polysubstance abuse. Dr. Salcedo explained that substance abuse does not rise to the level of mental defect or sanity at the time of an offense nor do depression and anxiety impair an individual such that the person cannot distinguish right from wrong. Dr. Salcedo concluded that there was no evidence that the defendant suffered from a psychotic disorder at the time of the alleged offenses that would have impaired his ability to distinguish right from wrong and that the defendant was legally sane at the time of the alleged offenses.

ASSINGMENT OF ERROR NUMBER ONE

The defendant argues that the individual and consecutive sentences are excessive. He contends two counts occurred simultaneously at Walgreens, constituting a single event, and that all counts formed a common scheme committed within hours. He claims the trial court did not consider La. C.Cr.P. art. 894.1 or mitigating factors.

The State argues that the sentences are not excessive and are supported by the record.

La. C.Cr.P. art. 881.1(B) provides that a motion for reconsideration of sentence "shall be oral at the time of sentence or shall be in writing thereafter and shall set forth the specific grounds on which the motion is based." La. C.Cr.P. art. 881.1(E) provides that "failure to make or file a motion to reconsider sentence or to include a specific ground upon which a motion to reconsider sentence may be based, including a claim of excessiveness, shall preclude the state or the defendant

from raising an objection to the sentence or from urging any ground not raised in the motion on appeal or review."

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 bare review of the sentence for constitutional excessiveness. *State v. Manuel*, 20-172 (La. App. 5 Cir. 6/2/21), 325 So.3d 513, 568, *writ denied*, 21-926 (La. 10/12/21), 325 So.3d 1071. When the consecutive nature of sentences is not specifically raised in the trial court, the defendant is precluded from raising the issue on appeal and the issue is not included in the review for constitutional excessiveness. *State v. Durant*, 24-243 (La. App. 5 Cir. 2/26/25), 406 So.3d 736, 743. 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, these issues are not included in the bare review for constitutional excessiveness, and the defendant is precluded from raising these issues on appeal. *State v. Robertson*, 23-525 (La. App. 5 Cir. 10/23/24), 398 So.3d 767, 775.

The defendant did not orally object or file a motion to reconsider his sentence. He is therefore not entitled to review of the consecutive nature of the sentences or the trial court's compliance with La. C.Cr.P. art. 894.1; review on appeal is limited to constitutional excessiveness of the individual sentences.

The Eighth Amendment to the United States Constitution prohibits cruel and unusual punishment. Article I, § 20 of the Louisiana Constitution also prohibits cruel and unusual punishment but further explicitly prohibits excessive punishment. *State v. Ford*, 24-197 (La. App. 5 Cir. 2/26/25), 406 So.3d 652, 680, *writ denied*, 25-356 (La. 5/20/25), 409 So.3d 216. A sentence is considered excessive, even when it is within the applicable statutory range "if it makes no measurable contribution to acceptable goals of punishment and is nothing more than the purposeless imposition of pain and suffering and is grossly out of

proportion to the severity of the crime." *Id.* 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. *Id.* The issue on appeal is whether the trial court abused its discretion, not whether another sentence might have been more appropriate. *Id.* The appellate court shall not set aside a sentence for excessiveness if the record supports the sentence imposed. La. C.Cr.P. art. 881.4(D); *State v. Reed*, 24-59 (La. App. 5 Cir. 12/30/24), 409 So.3d 980, 1007, *writ denied*, 25-150 (La. 9/10/25), 415 So.3d 1279. 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, the appellate court considers: 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.

The defendant was convicted of four counts of armed robbery with a firearm. Pursuant to La. R.S. 14:64(B), whoever commits the crime of armed robbery shall be imprisoned at hard labor for not less than ten years and for not more than ninety-nine years, without the benefit of parole, probation, or suspension of sentence. La. R.S. 14:64.3 states that when the dangerous weapon used in the commission of the crime of armed robbery is a firearm, the offender shall be imprisoned at hard labor for an additional period of five years without benefit of parole, probation, or suspension of sentence. The judge imposed a sentence of twenty-five years at hard labor on each count and an additional five years imprisonment for the use of a firearm. In imposing the sentence, the judge explained that there were four different victims who testified how they were affected by the robbery.

As to the nature of the crime, the Louisiana courts have recognized that armed robbery "is a pernicious offense," which "creates a great risk of emotional and physical harm to the victim, to witnesses, and, at times, even to the offender." *State v. Rogers*, 23-558 (La. App. 5 Cir. 8/28/24), 398 So.3d 209, 226, *writ denied*, 24-1195 (La. 12/27/24), 397 So.3d 1217; *State v. Robinson*, 22-310 (La. App. 5 Cir. 4/12/23), 361 So.3d 1107, 1116 (citing *State v. Celestine*, 12-241 (La. 7/2/12), 92 So.3d 335, 337 (*per curiam*).

In this case, on a single day the defendant robbed three stores in Jefferson Parish and one store in another parish, and each time held the cashier at gunpoint. Ms. Holmes, the cashier at Walgreens, testified that she tensed up and prayed, thinking that the defendant was going to shoot her. After the robbery, she could not calm down and is unable to return to Walgreens since the robbery. Ms. Stevenson, one of the Dollar General victims, described the robbery as "scary." After committing the last armed robbery, the defendant engaged in a vehicle pursuit that spanned several miles and endangered the public and officers.

As to the nature and background of the offender, the defendant's mental health history was addressed several times prior to and at trial. The fifty-year-old defendant was in special education classes and had a "grade school" education. He had been incarcerated in Texas for ten years. The defendant never took responsibility for his actions. Rather, in his statement to the police wherein he admitted to the robberies, he repeatedly asserted that he was drinking and using drugs and was enticed to commit the offenses. In an evaluation report, Dr. Salcedo stated the defendant's "rap sheet" was extensive, dating to 1989.

A review of similar sentences were found not to be excessive. *See State v. Greene*, 24-650 (La. App. 3 Cir. 4/30/25), 416 So.3d 523, *writ denied*, 25-647 (La. 11/19/25), 420 So.3d 1179 (twenty-five years imprisonment); *State v. Green*, 16-793 (La. App. 4 Cir. 5/3/17), 220 So.3d 103, *writ denied*, 17-1080 (La. 4/16/18),

239 So.3d 830 (twenty-five years imprisonment); *State v. Thompson*, 12-83 (La. App. 3 Cir. 10/10/12), 100 So.3d 375 (twenty-five years imprisonment plus five years enhancement).

For the above reasons, we find that the sentences imposed on the defendant for each count are not constitutionally excessive.

ASSIGNMENT OF ERROR NUMBER TWO

The defendant argues that his statement should have been suppressed because he requested an attorney several times during his interrogation. He contends that the detective repeatedly ignored his statements that he wanted an attorney and that he did not further initiate conversation. He argues that the waiver of rights was not knowing and intelligent under the totality of the circumstances.

The State asserts the trial court did not err, as the defendant voluntarily waived his right to counsel by re-engaging with detectives. The State argues any error was harmless.

The State must prove the admissibility of a purported confession or statement by the defendant. La. C.Cr.P. art. 703(D); *State v. Siekmann*, 24-178 (La. App. 5 Cir. 2/5/25), 406 So.3d 509, 519. For a confession to be admissible, the State must show it was freely and voluntarily given, without influence of fear, duress, threats, inducements, or promises. La. R.S. 15:451; La. C.Cr.P. art. 703(D); *State v. Brown*, 16-998 (La. 1/28/22), 347 So.3d 745, 789, *cert. denied*, -- U.S. --, 143 S.Ct. 886, 215 L.Ed.2d 404 (2023). This "voluntariness" determination is based on the totality of the circumstances under which the accused gave the statement; if the accused gave the statement while in custody, he must have first been advised of his constitutional rights and executed a knowing and intelligent waiver of those rights. *Id.* Before an inculpatory statement made during a custodial interrogation may be introduced into evidence, the State must prove beyond a reasonable doubt that the defendant was first advised of his *Miranda*

rights; that he voluntarily and intelligently waived his *Miranda* rights; and that the statement was made freely and voluntarily and not under the influence of fear, intimidation, menaces, threats, inducements or promises. *State v. Scott*, 22-330 (La. App. 5 Cir. 3/15/23), 360 So.3d 92, 100, *writ denied*, 23-554 (La. 1/10/24), 376 So.3d 138. A determination of voluntariness is made on a case-by-case basis, depending on the totality of the facts and circumstances of each situation. *State v. Jaramillo*, 23-322 (La. App. 5 Cir. 2/28/24), 382 So.3d 1072, 1077, *writ denied*, 24-367 (La. 10/8/24), 394 So.3d 267.

Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), requires that a suspect subject to custodial interrogation has the right to consult with an attorney and to have counsel present during questioning, and that the police must explain this right to the suspect before questioning begins. If the individual indicates at any time that he wishes to remain silent, or requests an attorney, the interrogation must end. *Id.* at 1612.

In *State v. Curry*, 25-365 (La. 6/17/25), 411 So.3d 627, the Louisiana Supreme Court found that despite initially invoking his right to counsel, the defendant—and not law enforcement—immediately thereafter re-initiated conversation with law enforcement as to the offenses that led to the defendant being detained. Further discussion of the defendant's *Miranda* rights ensued. The court stated that there was a misstatement of the law, which was corrected. Then, prior to substantive questioning beginning, the defendant was explicitly asked, "Do you want a lawyer at this time, yes or no," to which defendant replied, "At this time, no." *Id.* at 628. The Court acknowledged that the parties discussed the defendant's rights for more than ten minutes before substantive discussion as to the subject matter of the criminal investigation began. The Court noted that the written rights form was reviewed by the defendant numerous times. A review of the videotaped session indicated law enforcement made clear that the defendant

was entitled to a lawyer and that if he could not afford one, the public defender process would be utilized to provide him one. The Court explained that in response to being asked whether he would like a lawyer at that time, defendant answered with an explicit no. The Court reversed the trial court's ruling granting the motion to suppress the statement. *Id.*

At the December 14, 2022 hearing on the motion to suppress, Sergeant Jerry testified that he arrested the defendant and advised him of his rights before he was placed in the police vehicle; the defendant indicated that he understood his rights. Upon arriving at the investigations bureau, Sergeant Jerry placed the defendant in an audio- and video-recorded interview room and the defendant was again advised of his rights using a waiver of rights form. Detective Vaught read the waiver of rights aloud; the defendant indicated that he understood his rights.

Sergeant Jerry testified that "at some point he made an indication that he would want an attorney," elaborating that it was not clear at that time what the defendant's wishes were. He testified that the defendant elected to speak with them and that he re-engaged with them multiple times.

Detective Vaught testified that he was present when Sergeant Jerry reviewed the rights form with the defendant and he took the defendant's audio- and video-recorded statement. He described the defendant as cooperative throughout the investigation. In the initial phases of the interview, the defendant referenced possibly wanting to talk to a lawyer. The detective testified that they tried to clarify the ambiguity of the defendant's statement and that the defendant continued to engage in conversation. Detective Vaught testified that the defendant did not have trouble understanding him and the defendant's responses to the questions were appropriate. The detective denied that there was any indication that the defendant was drinking or using drugs, noting that he did not detect alcohol on the

defendant's breath, his eyes were not red, bloodshot, or watery, his speech was clear, and he was cognizant.

The trial judge held the matter open and addressed the motion again on January 19, 2023. The defense counsel stipulated that the defendant was read his rights. Detective Vaught testified that after the defendant was read his rights and signed the form, he gave a recorded statement. He said the defendant indicated that he understood and waived his rights, and wanted to speak about the incident. The trial judge denied the motion to suppress the statement.

On November 10, 2023, new defense counsel filed another omnibus motion, which again included a generic motion to suppress the statement. The defendant filed subsequent *pro se* motions to suppress. At a hearing on October 16, 2024, the trial court stated the motion to suppress statement was previously denied.

Prior to jury selection on May 12, 2025, defense counsel stated that there was an issue regarding the prior "motions hearings." She said she did not think that there were arguments regarding whether defendant "asked for an attorney based on the interview, he mentioned twice, he would like to speak to an attorney." The trial judge re-opened the motion to suppress and viewed portions of the statement. The trial judge found the statement was given voluntarily noting that the defendant went from indicating that he wanted a lawyer present to saying that he wanted to have an honest conversation with the officers.

The defense counsel objected to the ruling, claiming that the defendant asked for a lawyer several times. In response, the judge explained that at one time, the defendant thought he needed an attorney and that the officers, who went over things several times with him, tried to clarify and the defendant agreed to have a conversation without his attorney present. The judge emphasized that the officers took a lot of time going over the form with the defendant and found the statement admissible.

The recorded statement given by the defendant in this case indicates that while the defendant was initially unclear as to whether he was waiving or invoking his right to counsel, he ultimately waived that right before giving the statement. Initially, the defendant agreed that he understood his rights but then indicated that he may not have fully understood everything. The video shows that the officers then took their time reviewing each right while attempting to confirm what portion(s) defendant did not understand. While reviewing the rights again, the defendant mentioned needing a lawyer to speak on his behalf. The officers asked follow up questions, to ascertain if defendant had an attorney or needed one. Sergeant Jerry told the defendant that the officers would get paperwork for his DNA. The defendant then re-engaged the officers by asking them questions. At that point, the officers again attempted to clarify whether the defendant was willing to speak to them without an attorney. The defendant stated he wanted to have a conversation with them. Detective Vaught then said he "needed to know clearly that" the defendant did not want his attorney present now. Defendant replied, "No, not at this time." This was an explicit waiver of his right to counsel.

Moreover, the erroneous admission of a confession or inculpatory statement is trial error subject to harmless error analysis. *State v. Brown*, 18-1999 (La. 9/30/21), 330 So.3d 199, 248, *cert. denied*, -- U.S. --, 142 S.Ct. 1702, 212 L.Ed.2d 596 (2022). In this case, video footage shows the defendant committing the armed robberies and fleeing in the same vehicle. Officers found a register balancing sheet, signed by the Westwego Dollar General cashier, in that vehicle. At the time of his arrest, the defendant wore the same clothing as seen in the videos of the robberies. The defendant's fingerprint was found on a cash register till taken during one of the robberies. Ms. Stevenson, the victim of the robbery at the Dollar General in Westwego, selected the defendant's photograph from a lineup. Thus,

given the overwhelming evidence of the defendant's guilt, we find any error in admitting the statement was harmless.

ASSIGNMENT OF ERROR NUMBER THREE

The defendant contends counsel's trial performance was deficient because she could not recall his name during the motion to suppress, cross-examined only four witnesses, and did not present a defense. He claims counsel inadequately addressed his medical history and the insanity plea and raised few objections. He further argues counsel was deficient at sentencing by not presenting mitigating factors, objecting, or filing a motion to reconsider.

The State responds that the defendant's claims are conclusory and unsupported by the record. It contends that the defendant failed to show deficient performance or prejudice at trial, and did not establish that a motion to reconsider would have changed the sentence.

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. To prove ineffective assistance of counsel, defendant must show: (1) that counsel's performance was deficient, that the performance fell below an objective standard of reasonableness under prevailing professional norms; and (2) that the deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). To prove prejudice, the defendant must demonstrate that, but for counsel's unprofessional conduct, the outcome of the trial would have been different. *Durant*, 406 So.3d at 746.

To prevail, the accused must overcome a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance. *State v. Howard*, 24-145 (La. App. 5 Cir. 12/18/24), 409 So.3d 915, 937, *writ denied*, 25-96 (La. 4/8/25), 405 So.3d 566. An alleged error that is within the ambit of trial

strategy does not establish ineffective assistance of counsel because "opinions may differ on the advisability of such a tactic." *Id.*

Hindsight is not the proper perspective for judging the competence of counsel's trial decisions and an attorney's level of representation may not be evaluated based on whether a particular strategy is successful. *Robinson*, 361 So.3d at 1116. The burden is on the defendant to overcome the presumption that, under the circumstances, counsel's conduct falls within the wide range of reasonable professional assistance and that the challenged action "might be considered sound trial strategy." *Id.* Counsel's decisions as to which questions to ask on cross-examination generally form a part of trial strategy. *Howard*, 409 So.3d at 937. The time and manner of making objections is part of the trial strategy decision-making of the trial attorney. *State v. Moore*, 16-644 (La. App. 5 Cir. 3/15/17), 215 So.3d 951, 968.

Generally, an ineffective assistance of counsel claim is most appropriately addressed through an application for post-conviction relief filed in the district court, where a full evidentiary hearing can be conducted, if necessary, rather than by direct appeal. *State v. Richards*, 23-448 (La. App. 5 Cir. 11/20/24), 411 So.3d 739, 766, *writ granted in part*, 24-1355 (La. 12/11/24), 396 So.3d 945, and *writs denied*, 25-28 (La. 4/1/25), 404 So.3d 652, and 24-1547 (La. 4/1/25), 404 So.3d 656. However, when the record contains sufficient evidence to rule on the merits of the claim and the issue is properly raised in an assignment of error on appeal, it may be addressed in the interest of judicial economy. *Id.* Here, the record is sufficient to address the defendant's claims.

The defendant argues that counsel was ineffective because she only cross-examined four witnesses, those cross-examinations were not in depth, few objections were made, and an insanity defense was not presented. However, these matters, including the decision to waive opening statement, fall within the ambit of

trial strategy and do not establish ineffective assistance of counsel. Further, these general statements and conclusory allegations are not sufficient to prove a claim of ineffective assistance of counsel. *State v. Bell*, 21-599 (La. App. 5 Cir. 6/22/22), 343 So.3d 914, 926, *writ denied*, 22-1179 (La. 9/27/22), 347 So.3d 155. In addition, the defendant fails to make any arguments as to how these allegations affected the outcome of trial or how the outcome would have been different.

The defendant argues that his counsel was ineffective at sentencing for failing to present mitigating factors, for failing to object to the sentence, and for not filing a motion to reconsider sentence. An "objectively reasonable standard of performance" at sentencing requires that "counsel be aware of the sentencing options in the case and ensure that all reasonably available mitigating information and legal arguments are presented in court." *State v. Harris,* 18-1012 (La. 7/9/20), 340 So.3d 845*,* 858.

The failure to file a motion to reconsider sentence does not in and of itself constitute ineffective assistance of counsel. *Robertson*, 398 So.3d at 780. A defendant must also "show a reasonable probability that, but for counsel's error, his sentence would have been different." *Id.*

The defendant argues that the following mitigating factors existed but were not presented at sentencing: his age, his prior diagnoses of several mental health conditions, his drug addiction, and his prior health issues, including hepatitis, hypertension, and chronic pain. He further states the judge did not consider that he attended special education classes and did not graduate from high school.

The same judge presided over this case from its inception in 2019 to the sentencing in 2025. There were multiple hearings regarding the defendant's competency and sanity. The defendant filed numerous *pro se* motions. His medical records were filed with a Motion for Re-examination of Competency filed on December 7, 2023. Those attached medical records contain the health issues

the defendant now argues the judge did not consider because defense counsel did not inform the judge of them. However, the judge was aware of the information as it was included in the pre-trial filing.

La. C.Cr.P. art. 883 provides:

> If the defendant is convicted of two or more offenses based on the same act or transaction, or constituting 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. Other sentences of imprisonment shall be served consecutively unless the court expressly directs that some or all of them be served concurrently. In the case of the concurrent sentence, the judge shall specify, and the court minutes shall reflect, the date from which the sentences are to run concurrently.

However, a trial judge retains discretion to impose consecutive penalties based on other factors, "including the offender's past criminality, violence in the charged crimes, or the risk he or she poses to the general safety of the community." *Durant*, 406 So.3d at 747. While the imposition of consecutive sentences requires particular justification when the crimes arise from a single course of conduct, consecutive sentences are not necessarily excessive. *Id.* When the trial court fails to articulate its reasoning for imposing consecutive sentences, remand is not required if the record provides an adequate factual basis to support the consecutive sentences. *Id.*

In the present case, in imposing consecutive sentences, the judge explained that there were four different victims, who testified how they were affected by the defendant's act of "putting a gun on them." The record supports the consecutive sentences for this defendant who robbed four different victims at three separate stores, while holding the cashiers at gunpoint. The defendant has failed to demonstrate a reasonable probability that his sentences would have been different had trial counsel presented the mitigatory factors presented on appeal, objected to the sentence, or filed a motion to reconsider sentence.

ERROR PATENT DISCUSSION

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).

Defendant's presence

A defendant charged with a felony shall be present: at the calling, examination, challenging, impaneling, and swearing of the jury; at all times during the trial when the court is determining and ruling on the admissibility of evidence; in trials by jury, at all proceedings when the jury is present; at the rendition of the verdict or judgment, unless he voluntarily absents himself. La. C.Cr.P. art. 831. Pursuant to La. C.Cr.P. art. 832:

> A. A defendant initially present for the commencement of trial shall not prevent the further progress of the trial, including the return of the verdict, and shall be considered to have waived his right to be present if his counsel is present or if the right to counsel has been waived and either of the following occur:
>
> (1) He voluntarily absents himself after the trial has commenced, whether or not he has been informed by the court of his obligation to be present during the trial.
> (2) After being warned by the court that disruptive conduct will cause him to be removed from the courtroom, he persists in conduct which justifies his exclusion from the courtroom.

The defendant refused to appear in court for the second and third day of trial. Officials at the jail reported that the defendant was placed on suicide watch, was being disruptive and violent, and demanded yet refused to take his medication when offered by a nurse. The judge spoke to defendant, deputies, and the defendant's treating physician. The defendant told the judge over Zoom that the nurse had the incorrect medication and that he needed to see the doctor. Via Zoom, the doctor said the defendant was not prescribed the medication he was demanding and that he was doing well on the two medications he was taking. After the doctor spoke, the defendant informed the judge he needed to see the

doctor to obtain his requested medication and until then, he was not competent to go to trial. The judge then ordered the defendant to appear in court for trial. A deputy informed the judge that the defendant continued to refuse to appear in court and did not want to participate via Zoom. The judge agreed to check with defendant on breaks to see if he was willing to participate.

On the final day of trial, the defendant told the judge over Zoom that he had not seen a doctor, and he was still not competent until he saw the doctor. The judge ordered the defendant to go to court. The defendant told the judge he was not refusing to go to court. The judge asked him if he wanted to go to court that day and the defendant replied that he was "not refusing until" he got his medication from the doctor. The judge explained that he spoke to the doctor who stated that the defendant was offered the same medication he had taken for the last couple of years. The judge reiterated that he was ordering the defendant to go to court, and the defendant stated that he wanted a continuance until he saw the doctor. The judge stated that although he ordered defendant to be in court, the defendant refused.

Therefore, we find the defendant, who was initially present for the commencement of trial, waived his right to be present via his voluntary absence. *See* La. C.Cr.P. art. 832. Accordingly, the defendant's absence does not require corrective action.

Restriction of benefits

La. R.S. 14:64(B) states that a person convicted of armed robbery shall be imprisoned at hard labor for not less than ten years and for not more than ninety-nine years, without benefit of parole, probation, or suspension of sentence. The court imposed a sentence of twenty-five years at hard labor on each count but did not restrict benefits as shown in the transcript, sentencing minute entry, and uniform commitment order.

Further, La. R.S. 14:64.3 states that when a firearm is used in the commission of armed robbery, the offender shall be imprisoned at hard labor for an additional period of five years without benefit of parole, probation, or suspension of sentence. The judge imposed an additional five years imprisonment on each count because a firearm was used, however, the transcript does not reflect the mandatory restriction of benefits.

Although the restriction on benefits is self-activating under La. R.S. 15:301.1, we remand the matter for correction of the uniform commitment order to reflect the restriction of benefits. We direct the Clerk of Court for the 24th Judicial District Court to transmit the original of the corrected uniform commitment order to the institution to which the defendant has been sentenced and to the Department of Corrections' legal department. *See State v. Fuentes*, 23-502 (La. App. 5 Cir. 7/31/24), 392 So.3d 1167, 1176.

Incomplete advisal

The sentencing transcript gave an incomplete advisal when he informed the defendant that he had "30 days within which to appeal this sentence and 2 years after the sentence becomes final to seek post-conviction relief." The minute entry reflects that defendant was informed that he had "two (2) years after judgement of conviction and sentence has become final to seek post-conviction relief." The transcript prevails. *See State v. Lynch*, 441 So.2d 732 (La. 1983). Accordingly, by way of this opinion, we inform the defendant that no application for post-conviction relief, including applications that seek an out-of-time appeal, shall be considered if filed more than two years after the judgment of conviction and sentence has become final under the provisions of La. C.Cr.P. arts. 914 or 922. *See Fuentes*, 392 So.3d at 1176.

CONCLUSION

For the preceding reasons, we affirm the defendant's four convictions of armed robbery with a firearm and four consecutive thirty-year sentences. We remand this matter for correction of the uniform commitment order as instructed.

AFFIRMED; REMANDED WITH INSTRUCTIONS

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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 **FEBRUARY 25, 2026** 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-400

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