NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 KA 0418

STATE OF LOUISIANA

VERSUS

JORDAN LEE

Judgment Rendered: September 10, 2010

* * * * * * *

APPEALED FROM THE SEVENTEENTH JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF LAFOURCHE
STATE OF LOUISIANA
DOCKET NUMBER 430849, DIVISION "E"

THE HONORABLE F. HUGH LAROSE, JUDGE

* * * * * * *

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BEFORE: WHIPPLE, McDONALD, AND McCLENDON, JJ.

McDONALD, J.

The defendant, Jordan Lee, was charged by bill of information with aggravated flight from an officer (count 1), a violation of La. R.S. 14:108.1(C); and attempted first degree murder (count 2), a violation of La. R.S. 14:30 and 14:27.[1] He pled not guilty and, following a jury trial, was found guilty as charged on count 1, and guilty of the responsive offense of attempted manslaughter on count 2, a violation of La. R.S. 14:31 and 14:27. The defendant filed a motion for postverdict judgment of acquittal, which was denied. On the conviction for aggravated flight from an officer, the defendant was sentenced to two years at hard labor and on the attempted manslaughter conviction, the defendant was sentenced to ten years at hard labor. The sentences were ordered to run concurrently. The defendant's motion to reconsider sentence was denied. He appeals, designating five assignments of error. We affirm the convictions and sentences.

FACTS

On May 1, 2006, Dean Lee, the defendant's uncle, drove the defendant to Dean's sister's house on Livas Lane in Thibodaux, Lafourche Parish. While the defendant and Dean were standing outside, someone Dean had known from the neighborhood drove up to a house several houses away. The driver exited his blue Oldsmobile Delta 88 and approached a woman. As the driver hugged the woman, the defendant ran to the blue car, jumped in, and drove away.

Dean returned to his car and followed the defendant. The driver, whose car had just been stolen, also followed the defendant in a white car, which belonged to

[1] The defendant was also charged with another count of attempted first degree murder, which was ultimately nol-prossed.

his friend. Using his cell phone, Dean contacted his mother and sister, who called the police.

Shortly thereafter, Thibodaux police were informed that a white car was chasing a blue car, and that both drivers were driving in a reckless manner traveling southbound on St. Charles Street. As Thibodaux police units began following the defendant in what would become an extended car chase, Dean and the owner of the blue car (who was following in the white car) abandoned their pursuit.

Without speeding, the defendant continued to drive between 30 and 40 m.p.h. during the pursuit. Driving through the city, he went the wrong way down a one-way street, crossed the center line several times into oncoming traffic forcing cars to leave the roadway, drove on the shoulder, and ran stop signs and traffic signals.

Sergeant Todd Gagnard was on duty at the Thibodaux Police Department when he heard over the radio that the car chase was not far from the station. He parked his police unit at the southernmost drive of the police department with the intention of deploying spike strips. However, as the chase moved toward him, Sergeant Gagnard observed that a Suburban police unit driven by Officer Butch Chiasson was in front of the defendant. Therefore, he did not deploy the spike strips. With police units in front of and behind the defendant, the chase slowed down to about 10 to 15 m.p.h. At one point, Officer Chiasson was able to stop the defendant's car in the left, northbound lane on Canal Boulevard. Sergeant Gagnard prepared to drive his unit to the right lane on Canal Boulevard to cut off any escape route from the defendant. As Sergeant Gagnard approached the right lane, the defendant drove his vehicle into the back of Officer Chiasson's unit. Sergeant Gagnard, who was in full police uniform, parked in the right lane, exited

his vehicle, drew his weapon, and ordered the defendant to stop and get out of the car. Sergeant Gagnard's unit was to his right with his driver's-side door open. The defendant revved the engine, and then drove toward Sergeant Gagnard. As the defendant's car bore down on Sergeant Gagnard, Sergeant Gagnard fired about six shots at the car's windshield and also shot out the driver's-side window. The defendant's car knocked Sergeant Gagnard's door shut, and Sergeant Gagnard was chased to the back of his unit, where he ran for safety.

The defendant drove away, and the chase resumed. Eventually, on La. Hwy. 3185, the defendant was run off the road into a ditch by a Lafourche Parish Sheriff's Office deputy in a police truck. It is not clear from the record if or how many times the defendant was shot. Dean testified at trial that he thought the police shot the defendant "two to three times." Dean went to see the defendant in the hospital, but could not remember where the defendant was shot.

ASSIGNMENT OF ERROR NO. 1

In his first assignment of error, the defendant argues the trial court erred in denying his motion to change pleas. Specifically, the defendant contends that his motion to change his pleas to not guilty and not guilty by reason of insanity should have been granted because he was able to show good cause.

In June of 2006, the defendant entered pleas of not guilty to the instant offenses. Subsequently, both the State and the defendant filed a motion for a sanity commission. The trial court ordered that Drs. Rafael Salcedo and Maria Cruse evaluate the defendant. Regarding the defendant's capacity to proceed to trial, the opinions of Dr. Salcedo and Dr. Cruse were in conflict. Accordingly, the trial court appointed Dr. Donna Mancuso for an additional evaluation. In a pre-trial hearing on February 13, 2009, defense counsel informed the trial court that Dr. Mancuso's report had come in and that she believed everyone had a copy of it.

At the September 18, 2009 hearing on the defendant's motion to change his pleas to not guilty and not guilty by reason of insanity, defense counsel indicated that Dr. Salcedo found in his report that the defendant was able to assist counsel at trial, while Dr. Cruse found the defendant was not able to assist counsel at trial. Neither doctor gave an opinion as to the defendant's mental state at the time of the offense because they needed more information. In her April 25, 2007 report, Dr. Mancuso found the defendant was able to assist counsel at trial, but indicated she needed more information to determine his mental state at the time of the offense. Subsequently, in her January 11, 2009 report, Dr. Mancuso indicated that, based on further evaluation, the defendant knew the difference between right and wrong at the time of the offense.

Based on this information, defense counsel argued at the hearing that the proceedings for the sanity commission had been suspended because two of the three doctors did not make a finding as to the defendant's mental state at the time of the offense. According to defense counsel, since the defendant's written motion for a sanity commission asked that the defendant be examined as to both his capacity to proceed to trial and his mental condition at the time of the offense, no further steps could be taken in the case until another doctor evaluated the defendant regarding his mental state at the time of the offense.

Louisiana Code of Criminal Procedure article 561 provides:

> The defendant may withdraw a plea of "not guilty" and enter a plea of "not guilty and not guilty by reason of insanity," within ten days after arraignment. Thereafter, the court may, for good cause shown, allow such a change of plea at any time before the commencement of the trial.

Well past ten days after arraignment, the defendant had still not sought to change his "not guilty" pleas. Accordingly, the trial court succinctly made the following findings:

> Never has the Defense to this date ever attempted to enter a plea of not guilty by reason of insanity. Therefore, his status at the time of the offense has never been raised in this courtroom at any point under any manner. There has never been an issue raised because the plea was not entered.
>
> Therefore, the only pertinent part of that order is whether or not he could assist counsel. That was determined. A further step was taken because under Article 561 the defendant is allowed to withdraw a plea of not guilty and enter a plea of not guilty and not guilty by reason of insanity within ten days of his arraignment. Thereafter, the court may, for good cause shown, allow such a change of a plea. The Defense, in its attempt to find good cause shown, requested this Court to order that determination by Dr. Mancuso, which was completed in January of 2009.
>
> That information obviously was provided to the Defense. They have a copy of the report and have never sought, for whatever reason, to file leave of court to change the plea.
>
> You cannot in some way substitute this finding by Dr. Mancuso or this request for a finding into a sanity commission because that plea has never been changed. Had the Defendant asserted such a change your argument may have merit. But at this time the only issue that this Court has had to address was his ability to assist counsel. That was determined by two out of the three appointed to the sanity commission for that limited purpose.
>
> Whether or not the Defense wanted to assert anything further was completely up to the Defense and to this date at this time, one day before trial is to commence, that has still not been done.[2] So the Court is not called upon to make such a determination.

The trial court's findings were correct. The defendant's mental incapacity to proceed may be raised at any time by the defense, the district attorney, or the court. La. C.Cr.P. art. 642. The court shall order a mental examination of the defendant when it has reasonable ground to doubt the defendant's mental capacity to proceed. La. C.Cr.P. art. 643. The report of the sanity commission members shall address their specific findings with regard to the defendant's capacity to understand the proceedings against him and his ability to assist in his defense. La. C.Cr.P. art. 645(A)(1). The criminal prosecution shall be resumed unless the court determines by a preponderance of the evidence that the defendant does not have the mental

[2] Trial commenced three days after this hearing on September 21, 2009.

capacity to proceed. La. C.Cr.P. art. 648. Louisiana Code of Criminal Procedure article 650 provides in pertinent part:

> When a defendant enters a combined plea of "not guilty and not guilty by reason of insanity," the court may appoint a sanity commission as provided in Article 644 to make an examination as to the defendant's mental condition at the time of the offense. The court may also order the commission to make an examination as to the defendant's present mental capacity to proceed.

In the instant matter, two of the three doctors who evaluated the defendant found he had the capacity to proceed to trial. Based on these findings, on May 11, 2007, the trial court found the defendant competent to proceed to trial. Thus, based on the defendant's "not guilty" plea, under the applicable codal provisions, the requirements of the sanity commission had been satisfied, and a resumption of the criminal prosecution was properly ordered by the trial court.

The defendant entered his "not guilty" pleas on June 15, 2006. As early as February 13, 2009, defense counsel informed the trial court that Dr. Mancuso's report had come in. Trial commenced September 21, 2009. Thus, three days prior to trial, at the time of the hearing on the motion to change pleas, defense counsel had waited over seven months after receiving Dr. Mancuso's report before defense counsel tried to change the defendant's pleas. Further, over three years had elapsed since the defendant entered his original "not guilty" pleas before any motion had been filed to change them. Thus, as correctly pointed out by the trial court, the defendant was required to show good cause in order for the court to consider allowing the change in pleas to not guilty and not guilty by reason of insanity. See La. C.Cr.P. art. 561.

In her attempt to satisfy the good cause requirement at the hearing, defense counsel introduced Dr. Mancuso's second report dated January 11, 2009,[3] wherein

[3] The report by Dr. Mancuso, which was made part of the appellate record, is her first report dated April 25, 2007. Dr. Mancuso's January 11, 2009 report is not in the record before us.

Dr. Mancuso found "to a reasonable degree of medical certainty that Mr. Lee exhibits criteria for psychotic disorder not otherwise specified." In his brief, the defendant asserts that Dr. Mancuso's finding of a psychotic disorder should have been enough to make a showing of good cause, and cites **State v. Miller**, 2005-1826 (La. 6/29/07), 964 So.2d 911, in support of his position.

Regarding the good cause requirement of La. C.Cr.P. art. 561, the **Miller** Court stated:

> In concluding that the defendant need only produce an indicia of insanity, or some evidentiary basis for the plea, to satisfy the good cause requirement, we note Article 561 does not specify a burden of proof. This fact is contrasted with LSA-C.Cr.P. art. 652, which, at trial, imposes on the defendant "the burden of establishing the defense of insanity at the time of the offense by a preponderance of the evidence." Given this statutory scheme, it would be incongruent to require the defendant to prove his insanity by a preponderance of evidence in order to merely change his plea.
>
> Although an indicia of insanity at the time of the offense may be a relevant consideration, such cannot be the sole determinative factor in deciding whether a defendant may change his plea pursuant to Article 561. The language of Article 561 does not obligate the defendant to prove his insanity at the time of the offense to change his plea. Further, the defense of insanity at the time of the offense is ultimately an affirmative defense which must be decided by the factfinder at trial. LSA-C.Cr.P. art. 652.

Miller, 2005-1826 at p. 20, 964 So.2d at 922-23.

The defendant suggests in his brief that the trial court, in denying the defendant's motion to change pleas, failed to apply the correct standard, which was whether the defendant had shown an indicia of insanity or some evidentiary basis for the pleas. We do not agree. Dr. Mancuso's finding of psychotic disorder not otherwise specified in no way suggested an indicia of insanity at the time of the offense. In fact, as noted in the trial court's reasons for denying the motion to change pleas, Dr. Mancuso specifically found that the defendant was sane at the time of the offense:

> Dr. Mancuso, in her report which was addressed to . . . the Public Defender's office dated January 11, 2009, at the request of Defense counsel, made a determination to a reasonable degree of medical certainty that the mental disease or defect did not prevent Mr. Lee from being able to distinguish right from wrong with reference to the conduct in question. Based upon the fact that this is Defense counsel's expert and she had now submitted her report into the record and apparently having conducted a thorough investigation not only of the pertinent witnesses, as well as the Defendant, but also of medical records and psychiatric records that she obtained, I'm going to find that the Defendant has failed to state good cause to allow a change of plea on the day before trial.
>
> This information was strictly within the purview of Defense counsel since January 11, 2009, and to raise a defense or attempt to raise on September 18 with no further documentation, no further attempts to get other supporting data and the fact that Dr. Mancuso's report clearly indicates that in her opinion that the Defendant did understand the difference between right and wrong with reference to the conduct with which he is charged.
>
> For that reason the Motion to Change Plea at this time, some two and a half years post his original plea, is hereby denied.

The defendant's burden of showing good cause for a change of plea logically increases each day that his trial date nears. See **State v. George**, 262 La. 409, 263 So.2d 339, 340-41 (1972), vacated on other grounds, 411 U.S. 902, 93 S.Ct. 1532, 36 L.Ed.2d 192 (1973). **State v. Mercer**, 564 So.2d 783, 785 (La. App. 2d Cir. 1990). The defendant waited over three years, until the first workday before trial, to file a motion to change his pleas.[4] He presented no evidence that he did not understand the difference between right and wrong at the time he committed the offense. Moreover, an expert who evaluated the defendant found that whatever disease or mental defect he may have had did not prevent him from being able to distinguish right from wrong at the time of the offense. Accordingly, the trial court did not abuse its discretion in refusing to allow the defendant to change his pleas. See **State v. Jason**, 99-2551, pp. 13-16 (La. App. 4th Cir. 12/6/00), 779 So.2d 865, 873-74, writ denied, 2001-0037 (La. 11/9/01), 801 So.2d 357.

[4] The motion to change plea hearing was on Friday, September 18, 2009. Trial began on Monday, September 21, 2009.

This assignment of error is without merit.

ASSIGNMENTS OF ERROR NOS. 2, 3, and 4

In these assignments of error, the defendant argues that the evidence was insufficient to support the conviction for attempted manslaughter. Specifically, the defendant contends the State failed to prove he had the specific intent to kill.[5] The defendant does not contest the sufficiency of his aggravated flight from an officer conviction.

A conviction based on insufficient evidence cannot stand as it violates Due Process. See U.S. Const. amend. XIV; La. Const. art. I, § 2. The standard of review for the sufficiency of the evidence to uphold a conviction is whether or not, 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 beyond a reasonable doubt. **Jackson v. Virginia**, 443 U.S. 307, 318-19, 99 S.Ct. 2781, 2788-89, 61 L.Ed.2d 560 (1979). See La. C.Cr.P. art. 821(B); **State v. Ordodi**, 2006-0207, p. 10 (La. 11/29/06), 946 So.2d 654, 660; **State v. Mussall**, 523 So.2d 1305, 1308-09 (La. 1988). The **Jackson** standard of review, incorporated in Article 821, is an objective standard for testing the overall evidence, both direct and circumstantial, for reasonable doubt. When analyzing circumstantial evidence, La. R.S. 15:438 provides that the factfinder must be satisfied the overall evidence

[5] In his second assignment of error, the defendant argues the evidence was insufficient to support the conviction. The defendant filed a motion for a new trial, which was denied. In his third assignment of error, the defendant argues the trial court erred in denying the motion for new trial because the verdict was contrary to the law and evidence. See La. C.Cr.P. art. 851(1). The defendant's appeal addresses the sufficiency of the evidence. Sufficiency is properly raised by a motion for postverdict judgment of acquittal, not by a motion for new trial. Under La. C.Cr.P. art. 851(1), the trial court can consider only the weight of the evidence, not the sufficiency. See **State v. Williams**, 458 So.2d 1315, 1324 (La. App. 1st Cir. 1984), writ denied, 463 So.2d 1317 (La. 1985). We find no abuse of discretion in the instant matter of the trial court's denial of the defendant's motion for new trial. In his fourth assignment of error, the defendant argues the trial court erred in denying the motion for postverdict judgment of acquittal.

excludes every reasonable hypothesis of innocence. See **State v. Patorno**, 2001-2585, pp. 4-5 (La. App. 1st Cir. 6/21/02), 822 So.2d 141, 144.

While the defendant was charged with attempted first degree murder, he was found guilty of attempted manslaughter. Guilty of attempted manslaughter is a proper responsive verdict for a charge of attempted first degree murder. See La. C.Cr.P. art. 814(A)(2). Manslaughter is a homicide which would be first degree murder or second degree murder, but the offense is committed in sudden passion or heat of blood immediately caused by provocation sufficient to deprive an average person of his self-control and cool reflection. La. R.S. 14:31(A)(1). Any person who, having a specific intent to commit a crime, does or omits an act for the purpose of and tending directly toward the accomplishing of his object is guilty of an attempt to commit the offense intended; and it shall be immaterial whether, under the circumstances, he would have actually accomplished his purpose. La. R.S. 14:27(A).

In order for an accused to be guilty of attempted murder, a specific intent to kill must be proven beyond a reasonable doubt. Although a specific intent to inflict great bodily harm may support a conviction of murder, the specific intent to inflict great bodily harm will not support a conviction of attempted murder. **State in Interest of Hickerson**, 411 So.2d 585, 587 (La. App. 1st Cir.), writ denied, 413 So.2d 508 (La. 1982). See **State v. Butler**, 322 So.2d 189 (La. 1975). Attempted manslaughter also requires the presence of specific intent to kill. **State v. Brunet**, 95-0340, p. 5 (La. App. 1st Cir. 4/30/96), 674 So.2d 344, 347, writ denied, 96-1406 (La. 11/1/96), 681 So.2d 1258.

The defendant contends that his driving toward Sergeant Gagnard and merely clipping his unit door supported a specific intent to escape, rather than a specific intent to kill. However, the testimony and evidence presented at trial,

when viewed pursuant to the **Jackson** standard in the light most favorable to the prosecution, was sufficient to support the conviction of attempted manslaughter. Sergeant Gagnard testified at trial that he exited his unit and drew his weapon after the defendant hit the Suburban police unit. As the defendant revved the engine and approached Sergeant Gagnard, the defendant was looking directly at him. Sergeant Gagnard testified that he fired his weapon only "when I realized that he was trying to kill me, that he wasn't stopping, he was coming directly at me." Sergeant Gagnard further testified that, while his unit was to his right, there was enough open space to his left - "a partial shoulder" - for a car to pass through.

Our review of the DVD video of the car chase confirmed Sergeant Gagnard's description of this particular event. The video reveals that, as the defendant was stopped several feet from Sergeant Gagnard after hitting the police unit, there was a small parking lot to the defendant's right (Gagnard's left) which provided ample room for him to negotiate his way around Sergeant Gagnard without hitting him or his open unit door. Instead, the defendant drove directly at Sergeant Gagnard. The defendant's vehicle crossed in front of Sergeant's Gagnard's unit at an angle, with the left front of the defendant's vehicle facing the left front of Sergeant Gagnard's unit. If the defendant had continued straight, he would have driven into the parking lot to his right. Instead the defendant turned his car to the left to maintain a direct line on Sergeant Gagnard. The left side of the defendant's car passed so close to the left side of Sergeant Gagnard's unit, that if Sergeant Gagnard had not made his way to the rear of his unit, he would have been hit.

Dean Lee was the only witness to testify for the defense. Dean testified that he did not see the defendant hit the Suburban police unit. He also testified that he

saw the police open fire on the defendant, and the defendant did not drive in the direction of Sergeant Gagnard.

In finding the defendant guilty, the jury discounted the testimony of Dean suggesting that the defendant did not drive his vehicle at Sergeant Gagnard. The more credible testimony of Sergeant Gagnard, as well as the DVD video of the car chase, established that the defendant intended to hit Sergeant Gagnard with his car. The trier of fact is free to accept or reject, in whole or in part, the testimony of any witness. Moreover, when 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. The trier of fact's determination of the weight to be given evidence is not subject to appellate review. An appellate court will not reweigh the evidence to overturn a factfinder's determination of guilt. **State v. Taylor**, 97-2261, pp. 5-6 (La. App. 1st Cir. 9/25/98), 721 So.2d 929, 932. We are constitutionally precluded from acting as a "thirteenth juror" in assessing what weight to give evidence in criminal cases. See **State v. Mitchell**, 99-3342, p. 8 (La. 10/17/00), 772 So.2d 78, 83. The fact that the record contains evidence which conflicts with the testimony accepted by a trier of fact does not render the evidence accepted by the trier of fact insufficient. **State v. Quinn**, 479 So.2d 592, 596 (La. App. 1st Cir. 1985).

The evidence was sufficient for the jury to infer from the circumstances that the defendant intended to kill Sergeant Gagnard by hitting him and/or running over him with his car. Before the defendant gunned his car directly at Sergeant Gagnard, he was sitting idle in the car. He was ordered several times by Sergeant Gagnard, who had his weapon drawn, to exit the car. The defendant could have surrendered or easily driven around Sergeant Gagnard. Instead, the defendant attempted to hit Sergeant Gagnard with his car.

After a thorough review of the record, we find that the evidence supports the jury's unanimous verdict. We are convinced that viewing the evidence in the light most favorable to the State, any rational trier of fact could have found beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, that the defendant's acts manifested a specific intent to kill Sergeant Gagnard and that, as such, he was guilty of attempted manslaughter.

These assignments of error are without merit.

ASSIGNMENT OF ERROR NO. 5

In his fifth assignment of error, the defendant argues his sentence was constitutionally excessive. Specifically, the defendant contends the trial court did not consider his personal history and potential for rehabilitation. The defendant does not make clear which sentence he deems excessive. We will assume this assignment of error addresses both sentences.

The Eighth Amendment to the United States Constitution and Article I, section 20, of the Louisiana Constitution prohibit the imposition of excessive punishment. Although a sentence falls within statutory limits, it may be excessive. **State v. Sepulvado**, 367 So.2d 762, 767 (La. 1979). A sentence is considered constitutionally excessive if it is grossly disproportionate to the seriousness of the offense or is nothing more than a purposeless and needless infliction of pain and suffering. A sentence is considered grossly disproportionate if, when the crime and punishment are considered in light of the harm done to society, it shocks the sense of justice. **State v. Andrews**, 94-0842, pp. 8-9 (La. App. 1st Cir. 5/5/95), 655 So.2d 448, 454. The trial court has great discretion in imposing a sentence within the statutory limits, and such a sentence will not be set aside as excessive in the absence of a manifest abuse of discretion. See **State v. Holts**, 525 So.2d 1241, 1245 (La. App. 1st Cir. 1988). The Louisiana Code of Criminal Procedure sets

forth items that must be considered by the trial court before imposing sentence. La. C.Cr. P. art. 894.1. The trial court need not recite the entire checklist of Article 894.1, but the record must reflect that it adequately considered the criteria. **State v. Brown**, 2002-2231, p. 4 (La. App. 1st Cir. 5/9/03), 849 So.2d 566, 569.

The articulation of the factual basis for a sentence is the goal of La. C.Cr.P. art. 894.1, not rigid or mechanical compliance with its provisions. Where the record clearly shows an adequate factual basis for the sentence imposed, remand is unnecessary even where there has not been full compliance with La. C.Cr.P. art. 894.1. **State v. Lanclos**, 419 So.2d 475, 478 (La. 1982). The trial judge should review the defendant's personal history, his prior criminal record, the seriousness of the offense, the likelihood that he will commit another crime, and his potential for rehabilitation through correctional services other than confinement. See **State v. Jones**, 398 So.2d 1049, 1051-52 (La. 1981).

In the instant matter, the defendant was sentenced to ten years at hard labor for the attempted manslaughter conviction. The maximum sentence for such a conviction was twenty years at hard labor. See La. R.S. 14:27(D)(3) & 14:31(B). For his aggravated flight from an officer conviction, the defendant received the maximum sentence of two years at hard labor. See La. R.S. 14:108.1(E). These sentences were ordered to run concurrently. This court has stated that maximum sentences permitted under statute may be imposed only for the most serious offenses and the worst offenders, or when the offender poses an unusual risk to the public safety due to his past conduct of repeated criminality. **State v. Hilton**, 99-1239, p. 16 (La. App. 1st Cir. 3/31/00), 764 So.2d 1027, 1037, writ denied, 2000-0958 (La. 3/9/01), 786 So.2d 113.

At sentencing, the trial court stated in pertinent part:

> [U]pon review of the testimony that I heard during the trial, as well as the video that was presented in evidence, I find that this action was very cold and calculating. You placed not only yourself in great harm, you also placed the law enforcement officers who are sworn to uphold the law in grave danger and because of your actions four shots were fired in the city limits of the town of Thibodaux which placed the entire populous [sic] that was on Canal Blvd., the single most busy boulevard in this city, at risk and all it required was you to stop. . . .
>
> In reviewing the actions of the Defendant the Court makes the following findings: That there is an undue risk that during any period of a probated or suspended sentence the Defendant would commit other crimes. That the Defendant is in need of correctional treatment or a custodial environment that can be provided most effectively by his commitment to an institution. That any lesser sentence would deprecate from the seriousness of the Defendant's crimes and also, that the Offender knowingly created a risk of death or great bodily harm to more than one person.
>
> Based on the foregoing on the charge of Aggravated Flight, I hereby sentence the Defendant to be imprisoned at hard labor by the Department of Public Safety and Corrections for a period of two years. This is the maximum sentence allowed by law and quite frankly, I find that the acts that were exhibited to this Court constitute the most egregious violation of the statute that I have ever seen.

The trial court adequately considered the factors set forth in Article 894.1. Considering the trial court's careful review of the circumstances and the nature of the crimes, we find no abuse of discretion by the trial court. The trial court provided ample justification in imposing the maximum sentence allowed by law for the aggravated flight from an officer conviction. Regarding this particular crime, the trial court found the defendant's acts to constitute the most egregious violation of the statute he had ever seen. The trial court also noted that the defendant knowingly created a risk of death or great bodily harm to more than one person. Based on committing what the trial court found to be the worst type of offense in the category of aggravated flight from an officer, wherein the defendant attempted to run over a law enforcement officer, we find him to be the worst type of offender. See **State v. Mickey**, 604 So.2d 675, 679 (La. App. 1st Cir. 1992), writ denied, 610 So.2d 795 (La. 1993). Regarding his attempted manslaughter conviction, the defendant was sentenced to only ten years, or half the amount of

time to which he could have been sentenced. Moreover, the defendant's overall sentence of ten years was less than half of the maximum sentence of twenty-two years he could have received. Accordingly, the sentences imposed are not grossly disproportionate to the severity of the offenses and, therefore, are not unconstitutionally excessive.

This assignment of error is without merit. For these reasons, the convictions and sentences are affirmed.

CONVICTIONS AND SENTENCES AFFIRMED.