

Judgment rendered February 26, 2014.
Application for rehearing may be filed
within the delay allowed by Art. 922,
La. C.Cr.P.

No. 48,788-KA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

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STATE OF LOUISIANA

Appellee

versus

DEANGILO L. WHITE

Appellant

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Appealed from the
First Judicial District Court for the
Parish of Caddo, Louisiana
Trial Court No. 280,488

Honorable Craig Owen Marcotte, Judge

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Before BROWN, WILLIAMS, and CARAWAY, JJ.

CARAWAY, J., dissents with written reasons.

BROWN, CHIEF JUDGE

Defendant, Deangilo L. White, was charged with second degree murder. Following a jury trial, he was convicted of the responsive verdict of manslaughter. He was sentenced to 40 years at hard labor, the maximum for manslaughter. He appeals this sentence as being excessive. We affirm.

Facts

At approximately 8:00 p.m. on June 11, 2009, Arnita Lewis returned to her Cedar Grove home after picking up her 25-year-old daughter, Awaii Lewis, from work. Shortly after their arrival, the women saw the 19-year-old defendant and his two brothers standing in the street engaged in a fistfight with Kevin Powell. Apparently Powell got the best of the three White brothers. When the brawl ended, Powell withdrew to the carport of neighbor Jackie Bright's house. The White brothers then grabbed a golf club and plastic chair and re-initiated the fight. Again Powell bested the brothers. When the fighting ceased for the second time, the White brothers began to leave and an exhausted Powell walked into the carport. Moments later, defendant obtained a handgun and fired at least two rounds that struck Powell. Arnita and Awaii Lewis testified that defendant fired five shots; however, the police only found two shell casings. They explained that it was dark and these casings were small and others could have been lost in the grass. The White brothers fled the scene, and Awaii stayed with Powell until the paramedics arrived. Powell, who was 22 years old, was taken to the hospital, where he died. Two days later, Arnita spoke with defendant on the phone. Arnita claimed that Deangilo "was upset and crying, and his

words to me [Arnita] was he didn't mean to do it.... He didn't meant to shoot Kevin Powell.”

Following a jury trial, Deangilo White was convicted of the responsive verdict of manslaughter.¹ At sentencing, Miranda Powell, sister of the victim, Kevin Powell, spoke on behalf of the family. Miranda testified that Powell left behind a mother, four sisters, a wife, and two children, who were two years old and two months old at the time of his death. Powell worked two jobs and was the sole financial provider for his immediate family; he also contributed to support his mother and sisters.

The defense did not present any witnesses, but asked the trial court to note that defendant was a first felony offender and that he received Social Security benefits for a learning disability.

The trial court stated that it reviewed the sentencing guidelines and found “the relevant factors under 894.1 to be applicable under three, nine, 10, 18, 19, as well as a few others.” The court then provided a brief summary of the case. Specifically, the court noted that defendant and his two brothers fought the victim, hitting him with a chair and a golf club. When the fighting ceased, defendant armed himself with a gun and fired “five rounds” at the victim. The court believed that the facts supported a second degree murder conviction. The trial court sentenced defendant to 40 years at hard labor with credit for time served.

¹Jackie Bright also witnessed the shooting and testified before the grand jury. Prior to trial she suffered two strokes. She did testify at trial but her memory had to be refreshed with her Grand Jury testimony.

The defense filed a motion to reconsider sentence, which was denied, and this appeal ensued.

Discussion

According to the defense, the trial court failed to give consideration to numerous mitigating factors prior to imposing the maximum sentence. Particularly, the defense claims that defendant had no criminal history and would respond positively to a shorter period of incarceration. Further, the defense asserts that the responsive verdict of manslaughter indicates that the jury found that defendant acted under strong emotional provocation. The defense contends that the maximum sentence was predicated on the trial court's belief that defendant should have been found guilty of second degree murder. The defense believes that the maximum sentence for this offender shocks the sense of justice and is constitutionally excessive.

La. Const. Art. 1, §20 prohibits cruel, excessive, and unusual punishment. This proscription not only prohibits barbaric punishment but also sentences that are disproportionate to the offense committed. An excessive sentence is one that is grossly disproportionate to the offense committed. *State v. Dorthey*, 623 So. 2d 1276 (La. 1993); *State v. Bonanno*, 384 So. 2d 355 (La. 1980). Absent specific authority, it is not the role of an appellate court to substitute its judgment for that of the sentencing court as to the appropriateness of a particular sentence. *State v. Williams*, 03-3514 (La. 12/13/04), 893 So. 2d 7. In view of the substantial deference that must be accorded legislatures and sentencing courts, a reviewing court rarely will

be required to engage in extended analysis to determine that a sentence is not constitutionally disproportionate.

A court's proportionality analysis should be guided by the gravity of the offense and culpability of the offender. In the case *sub judice*, an innocent 22-year-old man was shot to death. The victim worked and supported his wife, two children, mother and sisters. The victim's family has been severely impacted by his death.

In considering the nature of the offense, both the trial court and the reviewing court may assess whether the crime for which defendant has been convicted adequately describes his conduct when the conviction is for a lesser included responsive offense to the crime charged. The fact that the evidence might have supported a verdict of second degree murder is an appropriate sentencing consideration in a case such as this one in which the defendant has been convicted of the lesser offense of manslaughter. *State v. Harris*, 11-626 (La. App. 5th Cir. 11/27/12), 105 So. 3d 914.

An examination of the facts in this case demonstrates that this was a second degree murder case in which defendant benefitted greatly from the lesser verdict of manslaughter. Three brothers fought a lone man and used as weapons a golf club and a chair. When the fight ended, Powell who was wearing only basketball shorts walked away, but defendant got a pistol and shot Powell. Intentionally pointing and firing a gun at close range supports a specific intent by defendant to kill the unarmed and defenseless victim.

As to the mitigating factors, it is noted that the defense presented no evidence or testimony on behalf of defendant. Instead, defense counsel

merely asked the trial court to recognize that defendant was a first felony offender and had a learning disability. The trial court acknowledged this, as well as defendant's age at the time of the crime. The trial court articulated a factual basis for the sentence imposed and sufficiently complied with La. C. Cr. P. art. 894.1.

Therefore, based upon the record and the totality of the circumstances of this case, as well as the fact that defendant greatly benefitted from the jury's conviction on the responsive verdict of manslaughter, the sentence imposed is neither grossly disproportionate to the severity of the offense of conviction, nor is it shocking to the sense of justice.

Conclusion

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

CARAWAY, J., dissenting.

The jury concluded that the facts of this crime presented a case of manslaughter. An ongoing antagonistic relationship existed between the defendant, his brothers and the victim. In the short time before the shooting, the parties' fight had provoked the defendant. In fact, by the time of the offense, two rounds of mutual fist-fighting had ensued between the men. White was not a bystander. He actively engaged in the brawl only a short time before he obtained a weapon and shot toward the victim from the driveway, outside the carport. The physical evidence showed that only two shots were fired. Two shell casings were located in the driveway. Bullet impacts were found at the back of the carport and on a side mirror of a car parked under the carport. Blood stains were found in front of the car, at the back of the carport. The wounds inflicted on the victim suggest a random type of shooting which was not at close range.

This overall view of the evidence coupled with the defendant's initial confession of the crime to a neighbor could be weighed by the jury and determined to amount to the crime of manslaughter. A reasonable measure of the criminal intent could determine a reckless unintended homicide by a humiliated youthful combatant sufficiently provoked in the heat of passion. Therefore, by the definition of the crime of manslaughter, the culpability of this offender as determined by the jury is not of the same magnitude of a murderer.

Discarding this unanimous verdict of the jury, the trial court expressed its belief that the jury reached a compromise verdict and that the

crime committed was second degree murder. The maximum manslaughter sentence for this youthful first offender was then imposed. The majority now agrees with the trial court that the facts do not allow for the jury's manslaughter verdict which is only permissible as a compromise verdict.

The proper perspective from which to approach sentence review accords paramount importance to the nature of the conduct proved at trial. With Louisiana's responsive verdict scheme, the jury is provided the discretion to return verdicts for lesser included offenses against the weight of the evidence present at trial. The trial court in sentencing and the reviewing court may assess whether the crime for which defendant has been convicted adequately describes his conduct when the conviction is for a lesser included responsive offense of the crime charged. *State v. Lewis*, 09-1404 (La. 10/22/10), 48 So.3d 1073, 1077-1078.

When I follow these dictates of the Louisiana Supreme Court, I cannot say that the jury's manslaughter verdict was against the weight of all evidence presented at trial, making it a compromise verdict for what was clearly a second degree murder. The choice between the competing views of the evidence was the jury's. Therefore, the conclusion of manslaughter adequately describes the defendant's conduct in this case, and the sentence must be assessed for that crime.

A sentence at or near the maximum should ordinarily apply only to the most blameworthy offenders committing serious violations of the described offense. *State v. LeBlanc*, 09-1355 (La. 7/6/10), 41 So.3d 1168. While this manslaughter was committed with a gun and is deserving of an

upper range sentence, the trial court's imposition of the maximum sentence on this youthful first offender was an abuse of discretion.