Fifth Circuit Court of Appeal
State of Louisiana

No. 25-KA-337

STATE OF LOUISIANA

versus

KENTRELL HUDSON

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 22-875, DIVISION "L"
HONORABLE DONALD A. ROWAN, JR., JUDGE PRESIDING

February 25, 2026

SCOTT U. SCHLEGEL

JUDGE

Panel composed of Judges Stephen J. Windhorst,
John J. Molaison, Jr., and Scott U. Schlegel

CONVICTIONS AFFIRMED; MULTIPLE OFFENDER ADJUDICATION AFFIRMED; CRIME OF VIOLENCE DESIGNATION REVERSED; HABITUAL OFFENDER SENTENCE VACATED; REMANDED FOR RESENTENCING

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Honorable Paul D. Connick, Jr.
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SCHLEGEL, J.

In this criminal appeal, defendant Kentrell Hudson challenges his conviction and sentence for obstruction of justice, the designation of this conviction as a crime of violence, as well as his adjudication and sentence as a second-felony offender.[1] For reasons stated more fully below, we affirm defendant's conviction and habitual offender adjudication. However, we reverse the designation of defendant's conviction for obstruction of justice as a crime of violence and also reverse his eighty-year sentence as unconstitutionally excessive.

PROCEDURAL HISTORY

On February 24, 2022, a Jefferson Parish Grand Jury returned an indictment charging defendant, Kentrell Hudson, with second degree murder of Frank Bailey, III in violation of La. R.S. 14:30.1 (count one), attempted second degree murder of Katerina Gutierrez in violation of La. R.S. 14:27 and La. R.S. 14:30.1 (count two), obstruction of justice in violation of La. R.S. 14:130.1 (count three), attempted simple escape in violation of La. R.S. 14:27 and La. R.S. 14:110 (count four), and resisting a police officer with force or violence in violation of La. R.S. 14:108.2 (count five). Defendant was arraigned on March 4, 2022, and he entered a plea of not guilty.

The case proceeded to trial on March 18, 2025. On March 20, 2025, the jury was unable to reach a verdict on counts one and two (second degree murder and attempted second degree murder), resulting in a mistrial on these counts. On counts three through five, the jury returned a verdict of guilty as charged.

On March 30, 2025, defendant filed motions for post-verdict judgment of acquittal and for new trial. On March 31, 2025, the State filed a motion to designate defendant's obstruction of justice conviction as a crime of violence. That same day, the trial court held oral arguments on all of these motions.

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[1] In this appeal, the Court has consolidated Case Nos. 25-KA-337 and 25-KA-465.

Following oral argument, the trial court denied defendant's motions for post-verdict judgment of acquittal and new trial and granted the State's motion to designate the obstruction of justice conviction as a crime of violence.

The State then read several victim impact statements and defendant waived sentencing delays. The trial judge indicated that he considered the sentencing guidelines set forth in La. C.Cr.P. art. 894.1, and sentenced defendant to forty years imprisonment at hard labor on the obstruction of justice conviction, two and a half years imprisonment at hard labor on the attempted simple escape conviction, and three years imprisonment at hard labor on the conviction for resisting a police officer with force or violence. The judge ordered the sentences to be served consecutively to each other. Defense counsel then moved for reconsideration of defendant's 40-year sentence on the obstruction of justice conviction as excessive and argued that it should not be based on the murder and attempted murder charges, which resulted in a mistrial. Defense counsel further argued that the video of the incident demonstrated that defendant was exhausted and distraught at the time he damaged the cell phone at issue. Following oral argument, the trial court denied defendant's motion for reconsideration of his sentence.

After sentencing, the State informed the trial court that it filed a multiple offender bill of information with respect to defendant's obstruction of justice conviction. The State alleged that defendant was a second-felony offender, having previously pled guilty on June 30, 2014, to La. R.S. 14:95(E), possession of a firearm while in possession of a controlled dangerous substance, in Case No. 14-389 in Division "O" of the 24th Judicial District Court in Jefferson Parish. Defendant entered a plea of not guilty to the multiple offender bill. Defendant also filed a motion for appeal on March 31, 2025, which the trial court granted on the same day.

Following a hearing held on July 10, 2025, the trial judge found defendant to be a multiple offender and sentenced him to eighty years imprisonment at hard labor without benefit of probation or suspension of sentence on his obstruction of justice conviction. The trial court further ordered the sentence to be served consecutive to count four and concurrent with count five. In his reasons for sentencing, the trial judge stated that based on the sentencing guidelines, "any lesser sentence than 80 years would deprecate the seriousness of this offense." Defendant filed a motion to reconsider sentence on August 5, 2025, which was denied by the trial court on August 7, 2025. Defendant also filed a second motion for appeal on August 5, 2025, which the trial court granted on August 7, 2025. This Court subsequently consolidated defendant's appeals.

EVIDENCE

Defendant's assignments of error relate solely to the conviction and sentences imposed with respect to the obstruction of justice charge. Thus, our review of the facts adduced at trial will focus primarily on the evidence relating to this charge.

On November 10, 2016, two shootings occurred in the parking lot of the Ridgefield Apartments located at 2800 Mount Kennedy Drive in Marrero, Louisiana, resulting in the death of Frank Bailey III and severe injuries to Katerina Gutierrez, who remained in a coma for several years. Following an investigation, officers identified defendant as a person of interest. As a result, Detective Thomas Gai with the homicide division of the Jefferson Parish Sheriff's Office obtained a search warrant for defendant's DNA. On November 30, 2016, Detective Gai met with defendant at the JPSO criminal investigations bureau and informed defendant that he was being investigated for first degree murder. Defendant waived his *Miranda*[2] rights and provided a statement. Detective Gai also obtained a buccal

[2] *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

swab from defendant. However, Detective Gai did not arrest defendant at that time because they were still in the early stages of the murder investigation and he wanted to wait for the DNA results.

After receiving a DNA report almost six months later in May 2017, Detective Gai obtained an arrest warrant for defendant for first degree murder and attempted first degree murder. Defendant was arrested on May 18, 2017, and a cell phone was retrieved from him.[3] At the criminal investigations bureau, defendant was advised of and waived his *Miranda* rights and provided another statement to Detective Gai. At the end of the interview, Detective Gai left the room, returned with defendant's cell phone, and asked him for the password. Defendant replied that he did not know it. Detective Gai stated that defendant did not have to tell him the password, but could instead turn the password setting off. Defendant asked why he needed his password, and Detective Gai stated he needed to do a search warrant on the phone and placed it on the table by defendant. Defendant then got up from his chair, grabbed the cell phone, raised it above his head, and slammed it to the floor. The phone was severely damaged. Detective Gai picked up the phone and stated he was going to charge defendant with obstruction of justice because the phone was evidence in the case. Defendant responded that it was his phone, that he had just bought the phone, and that they could obtain information from the SIM card. Detective Gai testified that defendant told Detective Kurt Zeagler that he had just obtained the phone a month or two prior to his arrest. However, Detective Gai explained that they were interested in obtaining access to the cell phone regardless because people often have their data transferred from one phone to another. Also,

[3] Trooper Carl James, formerly a patrol officer with the JPSO, participated in defendant's arrest on May 18, 2017. Defendant led officers on a chase but he was eventually apprehended, advised of his *Miranda* rights, and searched for weapons. Trooper James recovered a cell phone from defendant's pocket and transferred the phone to Detective Gai.

he testified that records obtained from the cell provider would not provide access to data stored on the phone.

While officers were preparing an arrest warrant for obstruction of justice, defendant asked to use the restroom. On his way back from the restroom, Detective Gai escorted defendant towards the rear door so he could be transported to the correctional facility. Defendant broke free from Detective Gai's grasp and started running toward the exit doors. Detective Gai testified that he and other detectives had to use force to grab defendant and bring him to the ground to subdue him from running out of the building. Defendant kicked Detective Gai in the process.

Detective Gai logged the damaged cell phone into evidence and forwarded it to JPSO's Digital Forensics Unit, which collects data from electronic devices. Detective Dustin Ducote, an officer with the JPSO's Digital Forensics Unit, testified that he received a gold Samsung cell phone in connection with the instant matter and a search warrant to extract data from it. However, Detective Ducote was not able to retrieve any data due to the damage to the phone, particularly the port at the bottom of the phone. He explained that due to the damage, they could not connect the software used to extract information to the device. Detective Ducote further explained that in 2016, a SIM card could only store a limited amount of information. He testified that it was "mainly contacts at that point because the storage wasn't that large."

According to Detective Ducote, the district attorney's office contacted him again in 2024 or 2025 to inquire about extracting information from the phone. He attempted to get the phone to turn on and repair the motherboard; however, it did not connect. He also sent the phone to an outside laboratory that attempted to obtain information by removing the main processing chip from the motherboard

and transplanting it to a chip reader. He explained that following this process, they were only able to obtain a very limited amount of information from the phone.

LAW AND ANALYSIS

On appeal, defendant challenges the sufficiency of the obstruction of justice conviction, the sentence imposed for this conviction, the multiple offender adjudication, the enhanced sentence, and the designation of the conviction of obstruction of justice as a crime of violence.

Sufficiency of Evidence[4]

In his first three assignments of error, defendant challenges the sufficiency of the evidence for his obstruction of justice charge. Defendant first argues that an obstruction of justice charge based on tampering with evidence requires the State to prove that the tampering occurred at the scene of the crime or at "the location of storage, transfer, or place of review." Defendant contends that the alleged act of tampering at issue in this case did not occur at either of these locations. He also asserts that there is no evidence to establish that the cell phone was in his possession at the time of the shootings on November 10, 2016, because he was not arrested until May 18, 2017. Finally, defendant argues that the State failed to prove that he had the specific intent to distort the results of a criminal investigation or that he knew or understood that the act of damaging the phone may affect the criminal proceedings. Thus, defendant contends that the trial court should have granted his motions for post-verdict judgment of acquittal and new trial for the obstruction of justice charge.

In reviewing the sufficiency of the evidence, an appellate court must determine if the evidence, whether direct or circumstantial, or a mixture of both, viewed in the light most favorable to the prosecution, was sufficient to convince a rational trier of fact that all of the elements of the crime have been proven beyond

[4] This discussion entails Assignments of Error One through Three in Case No. 25-KA-337.

a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). The 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. *State v. Aguilar*, 23-34 (La. App. 5 Cir. 11/15/23), 376 So.3d 1105, 1108. 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*. Indeed, the resolution of conflicting testimony rests solely with the trier of fact, who may accept or reject, in whole or in part, the testimony of any witness. *State v. Lavigne*, 22-282 (La. App. 5 Cir. 5/24/23), 365 So.3d 919, 940. Thus, 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*.

Evidence may be either direct or circumstantial. Circumstantial evidence consists of proof of collateral facts and circumstances from which the existence of the main fact can be inferred according to reason and common experience. *State v. Gatson*, 21-156 (La. App. 5 Cir. 12/29/21), 334 So.3d 1021, 1034. When circumstantial evidence is used to prove the commission of an offense, La. R.S. 15:438 provides that "assuming every fact to be proved that the evidence tends to prove, in order to convict, it must exclude every reasonable hypothesis of innocence." *Id*. This is not a separate test from the *Jackson* standard but rather provides a helpful basis for determining the existence of reasonable doubt. *Id*. All evidence, both direct and circumstantial, must be sufficient to support the conclusion that the defendant is guilty beyond a reasonable doubt. *State v. Woods*, 23-41 (La. App. 5 Cir. 11/15/23), 376 So.3d 1144, 1155, *writ denied*, 23-1615 (La. 5/29/24), 385 So.3d 700.

At the time the offense was committed,[5] La. R.S. 14:130.1 provided in pertinent part:

> A. The crime of obstruction of justice is any of the following when committed with the knowledge that such act has, reasonably may, or will affect an actual or potential present, past, or future criminal proceeding as described in this Section:
>
> (1) Tampering with evidence with the specific intent of distorting the results of any criminal investigation or proceeding which may reasonably prove relevant to a criminal investigation or proceeding. Tampering with evidence shall include the intentional alteration, movement, removal, or addition of any object or substance either:
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> (a) At the location of any incident which the perpetrator knows or has good reason to believe will be the subject of any investigation by state, local, or United States law enforcement officers; or
>
> (b) At the location of storage, transfer, or place of review of any such evidence.

Obstruction of justice is a specific intent crime. *State v. Lopez*, 23-335 (La. App. 5 Cir. 8/21/24), 398 So.3d 167, 181, *writ denied*, 24-1187 (La. 1/14/25), 398 So.3d 650. Specific criminal intent is the state of mind that exists when circumstances indicate the offender actively desired prescribed criminal consequences to follow his act. La. R.S. 14:10(1). To support a conviction, the State must prove that the act of tampering with evidence was done with "the specific intent of distorting the results of any criminal investigation or proceeding which may reasonably prove relevant to a criminal investigation or proceeding." La. R.S. 14:130.1(A)(1); *Lopez*, 398 So.3d at 181. The knowledge requirement of obstruction of justice is met if the perpetrator merely knows that an act "reasonably may" affect a criminal proceeding. *Id.* The statute does not require the criminal proceeding to actually be affected. *Id*. Specific intent need not be proven as fact

[5] It is well settled that a defendant is to be tried under the statute in effect at the time of the commission of the crime. *State v. Weaver*, 01-467 (La. 1/15/02), 805 So.2d 166, 170; *State v. Do*, 16-439 (La. App. 5 Cir. 12/14/16), 208 So.3d 1048, 1051 n.4, *writ denied*, 17-354 (La. 11/13/17), 229 So.3d 924.

but may be inferred from the circumstances of the transaction and the actions of defendant. *Id.* at 181.

In *State v. Dyas*, 45,065 (La. App. 2 Cir. 3/3/10), 32 So.3d 364, 370-71 *writ denied*, 10-759 (La. 11/19/10), 49 So.3d 397, the second circuit upheld a conviction for obstruction of justice where the defendant took the SIM card from the victim's cell phone during a police interview. The defendant was the victim's boyfriend. Prior to the start of the interview, the defendant was advised of his *Miranda* rights and informed that he was a person of interest for a first degree murder investigation. The girlfriend's cell phone was in the detective's office on his desk at the time of the interview. The detective testified that it was routine to have evidence in the office until it was transferred to the property room. The defendant was briefly left alone in the office with the phone. When he was later transported to the jail, defendant spit gum into a trash can. Detectives also heard something hard hit the floor and found a SIM card on the ground. Defendant admitted to concealing the SIM card in his mouth, but claimed that he took it from his own phone because the SIM card had been stolen from his phone during a prior arrest.

Detectives attempted to put the SIM card back in the defendant's phone but discovered that a SIM card was already there. They returned to the sheriff's office and inserted the SIM card into the victim's phone, and her settings appeared. Cell phone records provided that the defendant and the victim had voluminous text messages to each other. When the cell phone was later unlocked, all the text messages had been deleted. The defendant was interviewed again and admitted to taking the SIM card from the victim's phone to find out who she was communicating with and to protect her reputation with respect to her drug usage. One of the detectives testified that information from cell phones was generally helpful because it could be used to further an investigation by providing leads. He

opined that the SIM card could have been damaged when it was removed. He also testified that a delay in obtaining information from a victim's cell phone could delay or hinder an investigation and the ability of detectives to develop a suspect. He explained that despite the fact that some records were obtained from the cell phone service provider, they did not provide the content of the messages on the victim's phone.

On appeal, the defendant argued that the State failed to present evidence that he knew or had reason to know that the taking of the SIM card could affect a future criminal proceeding, that he had specific intent to distort the results of the proceeding, or that the evidence from the SIM card was reasonably likely to be relevant to a future criminal proceeding. On review, the appellate court found that the evidence was sufficient to convict the defendant of obstruction of justice. *Id*. at 370. The court found that the testimony proved that the defendant intentionally took evidence "from the location of storage, transfer, or place of review . . . with the intent of altering the outcome of the investigation." *Id*. at 371. The court further found that there was no reason for the defendant to take the SIM card unless he knew that the cell phone would help the officers, and knew or should have known that his actions would affect the criminal proceedings. *Id*. at 370; *see also State v. Simmons*, 24-722 (La. App. 5 Cir. 11/21/25), 2025 WL 3257923 (finding that the act of deactivating a cell phone immediately after a murder and then disposing of the cell phone by throwing it in the river was sufficient to uphold a conviction for obstruction of justice).

In the instant matter, the State alleged that defendant obstructed justice by tampering with evidence by intentionally altering his Samsung cell phone while at the JPSO's criminal investigations bureau during a homicide investigation. As explained above, defendant avers that the State failed to prove that any evidence tampering occurred at the scene of the crime or at "the location of storage, transfer,

or place of review." However, just as in *Dyas*, defendant's act of tampering occurred in the interrogation room where the evidence was in a location of storage and transfer after it was seized from defendant during his arrest.

Further, defendant's focus on whether the State proved that he was in possession of the cell phone at the time of the shootings is misplaced. As explained by the detective's testimony, the phone was relevant to the investigation of defendant's involvement in the shooting, and its destruction affected the criminal proceeding. Regardless of whether defendant had the phone at the time of the murders, detectives obtained a search warrant for the phone because they believed it could have evidence on it that would be helpful to their investigation of the shootings.

Defendant finally argues that the State failed to prove specific intent. However, video footage of defendant's statement deomstrated that it was at the moment Detective Gai asked defendant to unlock the phone so the search warrant could be performed that he threw it on the floor and destroyed it. These facts support a finding that defendant knew the cell phone was relevant to the investigation of his involvement with the homicide, and he intended to "distort the results" by destroying the cell phone. Accordingly, we find that the evidence was sufficient to support defendant's conviction for obstruction of justice.

Defendant also argues that the trial court erred when it denied his motions for post-verdict judgment of acquittal and for new trial based on the sufficiency of the evidence. For the same reasons discussed above, we find that the trial court did not err in denying these motions.

Multiple Offender Adjudication[6]

Defendant next contends that the trial court erred by finding him to be a multiple offender. However, defendant did not brief or otherwise provide any arguments regarding this claim. Assignments of error that are neither briefed nor argued are considered abandoned on appeal. *See* Uniform Rules Courts of Appeal – Rule 2-12.4; *State v. Blank*, 01-564 (La. App. 5 Cir. 11/27/01), 804 So.2d 132, 139. Further, based on our review of the record pursuant to *State v. Raymo*, 419 So.2d 858 (La. 1982), we find that this assignment of error lacks merit.

Excessive Sentence [7]

Defendant next argues that both his original forty-year sentence for obstruction of justice and his enhanced eighty-year sentence are excessive. First, we find that defendant's arguments with regard to his original forty-year sentence for obstruction of justice are moot, as the trial court resentenced defendant to eighty years as a multiple offender. *See State v. Marchiafava*, 19-581 (La. App. 5 Cir. 7/29/20), 300 So.3d 529, 531. Thus, we limit our consideration to whether defendant's eighty-year sentence as a second felony offender is unconstitutionally excessive.

The Eighth Amendment to the U.S. Constitution and Article I, § 20 of the Louisiana Constitution prohibit the imposition of excessive punishment. 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

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[6] This discussion entails Assignment of Error Four in Case No. 25-KA-337 and Assignment of Error One in Case No. 25-KA-465.

[7] This discussion entails Assignments of Error Five through Seven in Case No. 25-KA-337 and Assignments of Error Two and Three in Case No. 25-KA-465. In Assignments of Error Eight in Case No. 25-KA-337 and Four in Case No. 25-KA-465, defendant contends that the imposition of consecutive sentences is not supported by law. However, defendant did not specifically object to the consecutive nature of his sentences following sentencing or in either of his motions for reconsideration of his sentences. When the consecutive nature of sentences is not specifically raised in the trial court, the issue is not included in the review for unconstitutional excessiveness, and the defendant is precluded from raising the issue on appeal. *State v. Barnes*, 23-208 (La. App. 5 Cir. 12/27/23), 379 So.3d 196, 203, *writ denied*, 24-136 (La. 9/24/24), 392 So.3d 1141. Accordingly, we find that defendant is limited to a review of his sentences for unconstitutional excessiveness.

purposeless pain and suffering. *State v. Adams*, 23-427 (La. App. 5 Cir. 4/24/24), 386 So.3d 676, 683. 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. 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. *Adams*, 386 So.3d at 683.

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. However, there is no requirement that specific matters be given any particular weight at sentencing. *State v. Kelson*, 23-274 (La. App. 5 Cir. 12/27/23), 379 So.3d 779, 784-85. The Louisiana Supreme Court has recognized that while comparisons with similar cases are useful, the focus of sentence review remains on the character and propensities of the offender and the circumstances of the offense. *State v. LeBlanc*, 09-1355 (La. 7/6/10), 41 So.3d 1168, 1173; *State v. Short*, 23-473 (La. App. 5 Cir. 9/10/24), 398 So.3d 235, 242-43 ("[A]lthough a comparison of sentences imposed for similar crimes may provide guidance, '[i]t is well settled that sentences must be individualized to the particular offender and to the particular offense committed.'"). Maximum sentences are generally reserved for cases involving the most serious violations of the offense charged and the worst type of offender. *State v. Badeaux*, 01-406 (La. App. 5 Cir. 9/25/01), 798 So.2d 234, 239, *writ denied*, 01-2965 (La. 10/14/02), 827 So.2d 414.

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. *Barnes*, 379 So.3d at 204. The relevant question on appellate review is not whether another sentence might have been

more appropriate but rather whether the trial court abused its sentencing discretion. *State v. Stokes*, 19-128 (La. App. 5 Cir. 9/4/19), 279 So.3d 517, 522-23. Part of the abuse of discretion inquiry requires a court to consider the crime and the punishment given in light of the crime's harm to society and gauge whether the penalty is so disproportionate as to shock the sense of justice. *Id.*

Defendant was convicted of obstruction of justice. At the time the offense was committed,[8] La. R.S. 14:130.1(B)(1) provided, "[w]hen the obstruction of justice involves a criminal proceeding in which a sentence of death or life imprisonment may be imposed, the offender shall be fined not more than one hundred thousand dollars, imprisoned for not more than forty years at hard labor, or both." The trial court found that defendant was a second-felony offender in violation of La. R.S. 15:529.1. At the time of the underlying offense on May 18, 2017,[9] La. R.S. 15:529.1(A)(1) provided:

> (1) If the second felony is such that upon a first conviction the offender would be punishable by imprisonment for any term less than his natural life, then the sentence to imprisonment shall be for a determinate term not less than one-half the longest term and not more than twice the longest term prescribed for a first conviction.

Therefore, defendant was exposed to a term of imprisonment of twenty years to eighty years as a second-felony offender with an underlying offense of obstruction of justice. The trial court sentenced defendant as a second-felony offender to the maximum sentence of eighty years.

Prior to the initial sentencing, the trial judge stated that he considered the sentencing guidelines in La. C.Cr.P. art. 894.1, specifically the guidelines providing that the court should sentence a defendant to imprisonment if there is an

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[8] The law in effect at the time of the commission of the offense is determinative of the penalty which may be imposed against the offender. *State v. Sugasti*, 01-3407 (La. 6/21/02), 820 So.2d 518, 520-21.

[9] It is well-settled that a "defendant should be sentenced in accord with the version of La. R.S. 15:529.1 in effect at the time of the commission of the charged offense." *State v. Parker*, 03-924 (La. 4/14/04), 871 So.2d 317, 326.

undue risk that the defendant would commit another crime, that the defendant was in need of correctional treatment, and that any lesser sentence would depreciate the seriousness of the offense. Prior to sentencing defendant to eighty years on the multiple offender bill, the trial judge referenced his reliance at the original sentencing on La. C.Cr.P. art. 894.1 and again stated that any lesser sentence than eighty years would deprecate the seriousness of the offense.

Defendant contends that throwing a cell phone to the ground six months after a homicide, and with no evidence that he had the cell phone on the day of the homicide, did not merit an initial forty-year sentence. Defendant also argues that his prior conviction for La. R.S. 14:95(E) did not merit "an additional 40 flat years at hard labor." He asserts that he did not commit the worst offense of obstruction of justice and that his actions do not make him the worst type of offender. Defendant argues that the rationale offered by the trial judge did not provide legal justification for imposition of either sentence. Accordingly, he contends his motion to reconsider was also denied in error.

Dyas, *supra*, discussed in detail above, involved a similar scenario where a defendant tampered with a cell phone during a police interview. The defendant in *Dyas* was convicted of obstruction of justice in relation to a first degree murder investigation in which the defendant was a person of interest.[10] A jury convicted the defendant of obstruction of justice and he was sentenced as a second felony offender to a mid-range sentence of 40 years at hard labor. The predicate for the defendant's adjudication as a second felony offender was forgery. Defendant argued on appeal that the 40-year sentence was too harsh and excessive. However, the appellate court noted that the defendant had previously benefitted

[10] Unlike the present matter, it does not appear that murder charges were also brought against the defendant in *Dyas.*

from leniency and the midrange sentence did not shock the sense of justice. *Dyas*, 32 So.3d at 372.

In *State v. Quinn*, 19-647 (La. 9/9/20), 340 So.3d 829, a jury found the defendant guilty of second degree murder and obstruction of justice. The trial court imposed a life sentence on the murder charge and a consecutive sentence of 50 years as a second-felony offender for the obstruction of justice charge, where defendant was accused of removing the victim's body from the scene. On appeal, the appellate court reversed the second degree murder conviction and affirmed the obstruction of justice conviction. The Supreme Court affirmed the court of appeal's rulings as to the convictions and affirmed defendant's enhanced sentence for obstruction of justice. *Id.* at 837.

We further observe that in recent cases, maximum sentences for obstruction of justice convictions are most often imposed when the defendant is simultaneously found guilty of murder charges requiring the imposition of a life sentence. *See e.g., State v. Gelpi*, 25-58, p. 12 (La. App. 5 Cir. 12/10/25), 2025 WL 3534814 (defendant engaged in extensive efforts to clean up the crime scene and dispose of evidence; on appeal, this court found maximum sentence for obstruction of justice was not excessive); *State v. Thach*, 24-437 (La. App. 5 Cir. 4/2/25), 413 So.3d 1147 (defendant discarded the shirt he was wearing in a nearby trash can after he stabbed the victim in the neck; maximum sentence for obstruction of justice was not excessive on appeal).

Considering the relevant legal factors and the particular circumstances at issue, we agree that the destruction of a cell phone six months after a murder does not involve one of the most serious violations of obstruction of justice. And as discussed more fully below, the State did not charge defendant with an obstruction of justice that could be considered a crime of violence. Further, the imposition of a maximum eighty-year sentence amounts to an effective life sentence and we do

not find it to be an acceptable application of the trial court's sentencing discretion in this matter. In reaching this determination, we do not intend to minimize the harm caused by defendant. Destroying a cell phone that may be relevant to a murder investigation is a serious offense that could impact the outcome of the State's prosecution of defendant for the second degree murder of Frank Bailey, III, and attempted second degree murder of Katerina Gutierrez. And in this case, the jurors did not reach a verdict on these charges so the State could argue that the harm was real. However, the sentence imposed for defendant's obstruction of justice conviction should not be utilized as a substitute for a murder conviction.

Thus, we find that defendant's enhanced sentence is unconstitutionally excessive because the maximum eighty-year sentence is grossly out of proportion to the seriousness of this particular offense and shocks the court's sense of justice. Accordingly, we vacate defendant's enhanced sentence and we remand the matter for resentencing.

We recognize that the trial court can consider the facts and evidence presented at trial with respect to the murder charges that resulted in a mistrial when sentencing defendant on the obstruction of justice charge. Thus, pursuant to La. C.Cr.P. art. 881.4(A), we recommend a sentence in the range of forty to sixty years at hard labor without the benefit of probation or suspension of sentence.

Crime of Violence Designation[11]

Finally, defendant argues that the trial court erred when it designated his conviction for obstruction of justice as a crime of violence.

La. R.S. 14:2(B) defines crimes of violence as follows:

> In this Code, "crime of violence" means an offense that has, as an *element*, the use, attempted use, or threatened use of physical force against the person or property of another, *and* that, by its very nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the

[11] This discussion entails Assignment of Error Nine in Case No. 25-KA-337 and Assignment of Error Five in Case No. 25-KA-465.

> offense or an offense that involves the possession or use of a dangerous weapon. (Emphasis added.)

This provision then goes on to list enumerated offenses that are included as crimes of violence. *Id.* Obstruction of justice is not included in the list of offenses. Louisiana courts have confirmed, however, that the list of enumerated offenses in La. R.S. 14:2(B), is illustrative and not exhaustive. *State v. Oliphant*, 12-1176 (La. 3/19/13), 113 So.3d 165, 170; *Washington v. State*, 19-1792 (La. 1/27/21), 315 So.3d 198, 200. Thus, unlisted offenses may be denominated as crimes of violence under the general definition of the term provided by the statute. *State v. Day*, 24-503 (La. App. 1 Cir. 5/23/25), 417 So.3d 781, 787-88, *writ denied*, 25-742 (La. 12/16/25), 422 So.3d 782.

In its motion to designate defendant's obstruction of justice conviction as a crime of violence and at oral argument, the State argued that the trial court should apply a different section of the obstruction of justice statute, La. R.S. 14:130.1(A)(2)(c), to designate defendant's conviction as a crime of violence.[12] Section (A)(2)(c) defines obstruction of justice as "[u]sing or threatening force toward the person or property of another with the specific intent to . . . [c]ause or induce the alteration, destruction, mutilation, or concealment of any object with the specific intent to impair the object's integrity or availability for use in any criminal proceeding." The State contends that this obstruction of justice prong satisfies the definition of a crime of violence because it involves the use or threat of force against the property of another. Thus, the State argued that defendant's obstruction of justice conviction for tampering with evidence should now be designated as a crime of violence because his act of using physical force against the property of

[12] The obstruction of justice statute, La. R.S. 14:130.1, contains six different categories of acts that may qualify as obstruction of justice.

another (the cellphone in the JPSO's custody) also fits within the definition of obstruction of justice under Section (A)(2)(c), as well as the definition of a crime of violence under La. R.S. 14:2(B).

In response, defendant argued that he was indicted and convicted under the tampering with evidence section of the obstruction of justice statute contained in La. R.S. 14:130.1(A)(1). Defendant also argued that he did not use or attempt to use physical force against Detective Gai and further asserted that the phone that he damaged was his own property. Following oral argument, the trial court granted the motion and designated defendant's obstruction of justice conviction as a crime of violence.

It is undisputed that the State charged defendant with obstruction of justice under La. R.S. 14:130.1(A)(1), cited above, by alleging that defendant tampered with evidence by intentionally altering the phone seized from him following his arrest. This section of the obstruction of justice statute does not include the "use, attempted use, or threatened use of physical force against the person or property of another" as an element. Thus, the tampering with evidence prong of the obstruction statute does not fall under the definition of a crime of violence under La. R.S. 14:2(B). Further, the instructions the trial court provided to the jury did not contain the use or threat of force element of Section (A)(2)(c) of the obstruction of justice statute quoted above.

The State cannot charge and obtain a conviction against a defendant under one section of the obstruction of justice statute that clearly does not qualify as a crime of violence, and then seek to have the conviction designated as a crime of violence based on a different definition of obstruction of justice that was not charged in the indictment or presented to the jury for deliberation. Accordingly, we find that the trial court erred when it granted the State's motion to designate

defendant's obstruction of justice conviction as a crime of violence and reverse the trial court's ruling on this motion.

ERROR PATENT DISCUSSION

The record was reviewed 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 find no errors patent that require corrective action.

DECREE

For the foregoing reasons, we affirm defendant's conviction for obstruction of justice and his adjudication as a second-felony offender. However, we reverse the trial court's order designating defendant's conviction as a crime of violence and vacate defendant's enhanced sentence as unconstitutionally excessive. This matter is remanded for resentencing on the multiple offender bill.

CONVICTIONS AFFIRMED; MULTIPLE OFFENDER ADJUDICATION AFFIRMED; CRIME OF VIOLENCE DESIGNATION REVERSED; HABITUAL OFFENDER SENTENCE VACATED; REMANDED FOR RESENTENCING

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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-337
C/W 25-KA-465

E-NOTIFIED
24TH JUDICIAL DISTRICT COURT (CLERK)
HONORABLE DONALD A. ROWAN, JR. (DISTRICT JUDGE)
HOLLI A. HERRLE-CASTILLO (APPELLANT)
KEVIN V. BOSHEA (APPELLANT)
LIEU T. VO CLARK (APPELLANT)
MATTHEW R. CLAUSS (APPELLEE)
THOMAS J. BUTLER (APPELLEE)
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MAILED
NO ATTORNEYS WERE MAILED