Fifth Circuit Court of Appeal
State of Louisiana

No. 25-KA-303

STATE OF LOUISIANA

versus

WINSTON R. BARTHOLOMEW

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 24-2925, DIVISION "I"
HONORABLE NANCY A. MILLER, JUDGE PRESIDING

April 10, 2026

STEPHEN J. WINDHORST

JUDGE

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

CONVICTIONS AND SENTENCES AFFIRMED

SJW
MEJ
JJM

TRUE COPY

MORGAN NAQUIN
DEPUTY CLERK

COUNSEL FOR PLAINTIFF/APPELLEE,
STATE OF LOUISIANA

Honorable Paul D. Connick, Jr.
Monique D. Nolan
Thomas J. Butler
Molly Love
Leo M. Aaron

COUNSEL FOR DEFENDANT/APPELLANT,
WINSTON R BARTHOLOMEW

Gwendolyn K. Brown

WINDHORST, J.

Defendant, Winston R. Bartholomew, was convicted and sentenced for second degree murder (count one) and obstruction of justice (count two). Defendant only appeals his sentence for obstruction of justice. For the reasons that follow, we affirm defendant's convictions and sentences.

PROCEDURAL HISTORY

On July 18, 2024, a Jefferson Parish Grand Jury returned an indictment, charging defendant, Winston R. Bartholomew, with second degree murder in violation of La. R.S. 14:30.1 (count one) and obstruction of justice in violation of La. R.S. 14:130.1 (count two). Defendant was arraigned and pled not guilty.

On April 2, 2025, a twelve-person jury returned a verdict of guilty as charged on both counts. The trial court denied defendant's motion for new trial. On April 16, 2025, the trial court sentenced defendant to life imprisonment without the benefit of parole, probation, or suspension of sentence for second degree murder (count one) and forty years imprisonment at hard labor for obstruction of justice (count two), with the sentences ordered to run concurrently with each other. This appeal followed.

TRIAL EVIDENCE

This case involves the death of Gary Olver, which resulted from an altercation that occurred on May 14, 2024, between Mr. Olver and defendant, Winston R. Bartholomew, in Mr. Olver's apartment (apartment 7) in the Westgate apartment complex located at 2725 Mississippi Avenue in Metairie, Louisiana.[1]

Deputy Giovanni Gonzalez with the Jefferson Parish Sheriff's Office ("JPSO") testified that he responded to the Westgate apartments on May 14, 2024, at 7:36 P.M. in response to a 9-1-1 call reporting a medical emergency. When he

[1] The complex was made up of six apartments on the second story. The first story held a bar and a restaurant.

arrived, EMS and some neighbors were already present. He observed a male, later identified as Mr. Olver, lying on the floor with towels and a pillow next to him. Deputy Gonzalez stated a resident, Mr. Williams, informed him that he heard the altercation and a female yell "Stop it. You're going to kill him." He testified that at that time, "the signal," *i.e.*, the crime under investigation, changed to a second-degree aggravated battery because Mr. Olver was unconscious. Deputy Gonzalez testified he also observed blood coming from Mr. Olver's nose and mouth, a knot on his head, and a cut on the back of his head. Deputy Gonzalez identified photographs showing Mr. Olver's injuries and his apartment, and images from his body camera. He acknowledged that the apartment did not show signs of "furniture flying," but clarified that the witness was only trying to describe "something that he heard," not that he saw. Deputy Gonzalez stated that the case was transferred to the Homicide Division.

JPSO homicide Detective Scott Bradley testified that he became involved in the investigation approximately a week after the altercation between defendant and Mr. Olver. He explained that Mr. Olver was still hospitalized at this time but was not expected to survive. Detective Bradley stated that he obtained a search warrant for Mr. Olver's apartment, which was executed on May 21, 2024. He identified photographs, which captured bloody towels, a pillow on the ground, and blood specks on the backsplash of the sink and faucet.

Detective Bradley testified that he spoke to Mr. Olver's neighbors, Roy Williams and Judy Mosbey, who both told him that "Winston" was the perpetrator. He stated that Mr. Williams informed him that defendant arrived at Mr. Olver's apartment with a female. In his statement, Mr. Williams said that defendant and the female were "banging" on Mr. Olver's door, pushed their way in, and then he heard fighting coming from within Mr. Olver's apartment. Detective Bradley testified that Ms. Mosbey was the person who found Mr. Olver.

Upon further investigation, Detective Bradley identified the perpetrator "Winston" as defendant, Winston Bartholomew, and discovered that defendant was "associated" with a silver Ford F150. Detective Bradley obtained still images from the surveillance footage that had previously been obtained by the responding deputies. He stated that the images showed (1) a license plate on the back of a silver Ford truck, which was later connected to defendant; (2) the silver Ford truck in the back parking lot of the apartments; (3) defendant walking out of the door of the bar downstairs; (4) defendant walking up the stairs toward the apartments; and (5) two individuals walking up the "back stairs" of the apartments. An arrest warrant for defendant was issued, and he was subsequently arrested and brought to the investigation's bureau for questioning. Detective Bradley testified that he read defendant his Miranda[2] rights, defendant waived his rights, and defendant voluntarily gave a statement. Defendant's statement was then played for the jury.

During defendant's May 31, 2024 audio and video recorded statement, Detective Bradley informed defendant that Mr. Olver died and asked defendant to tell him about the incident. Defendant explained that Mr. Olver had been talking about him for months and that recently he heard that Mr. Olver was telling people that his girlfriend, Faye Han, "sucked his d**k." Defendant stated that he and Ms. Han went to Mr. Olver's apartment because he wanted her to confront Mr. Olver. When she confronted him, Mr. Olver denied spreading the rumor. Defendant said he made Ms. Han repeat the rumor, which she did "more forcefully," and Mr. Olver moved forward. Defendant stated that at that time, he was standing behind Ms. Han and he could not state whether Mr. Olver was "trying to come at [him]." Defendant admitted that when Mr. Olver "brushed up against" Ms. Han, he hit Mr. Olver two times because he did not know if Mr. Olver was coming for him or if he was going

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

to hurt Ms. Han. He related that when he hit him, Mr. Olver bounced off the wall but was still standing. He later clarified that he initially hit Mr. Olver three times. He said Mr. Olver had a busted nose and lip, which were bleeding.

In his statement, defendant averred that Ms. Han then moved out of the way, and he asked Mr. Olver why he would "say something like that." At that point, defendant asserted that Mr. Olver "charged him," and they started wrestling. Defendant acknowledged that Ms. Han said or screamed, "Stop." Defendant said he hit Mr. Olver two more times in the face, Mr. Olver "stumbled" and fell to the floor. He admitted that it was a "fight" at that point. Defendant claimed that he did not know if Mr. Olver hit the counter before he fell. He said that defendant got up and then went to the bathroom and Ms. Han left the apartment.

Defendant admitted in his statement that there was a "lull" in the fighting, wherein he again asked Mr. Olver, his friend and co-worker, "why he would say that." Defendant asserted that Mr. Olver walked out of the bathroom and over to the kitchen sink. At that point, he contended that he could not tell if Mr. Olver was washing dishes or if he was going for a knife, but maintained that they were talking, and he asked Mr. Olver to tell him the truth. Defendant could not explain why he did not leave at this point. He admitted that he was angry, not calm but claimed he did not scream or yell at Mr. Olver. Defendant acknowledged that he thought Mr. Olver wanted him out of his house at that point; however, Mr. Olver did not ask him to leave, stating they were having a conversation wherein he wanted Mr. Olver to tell him the truth. Mr. Olver turned and moved towards him again, and defendant admitted hitting Mr. Olver again. Defendant conceded that Mr. Olver fell to the floor, was unconscious, and did not get back up. He threw water on Mr. Olver in attempt to wake him up and he wiped Mr. Olver's face and the floor with a towel. Defendant asserted that he did not see any blood coming from the back of Mr. Olver's head.

Defendant also relayed in this statement that while Mr. Olver remained unconscious, he went to the bar downstairs to get a beer. Afterwards, he went back to Mr. Olver's apartment where he saw Mr. Olver still unconscious but breathing. Although he noticed that Mr. Olver was bleeding from the nose when he again wiped his face again, defendant admitted that he chose to leave. He claimed that he did not beat Mr. Olver while he was down. Defendant said that he had made a "mistake," and approximately twenty to thirty minutes later, he called his neighbors, "Judy and Frank," and told them to check on Mr. Olver. Defendant declared that he had no intention of killing Mr. Olver. Defendant claimed that he remained on the phone with Frank while they checked on Mr. Olver, and Frank said that Mr. Olver "looked like he was sleeping." Defendant assumed this meant Mr. Olver got up and he was asleep on the sofa or went to his bed. He stated that Frank called back and told him to come back because Mr. Olver did not "look good." Defendant averred that he was on his way back to the apartments when Frank called him again and informed him not to come back because an ambulance took Mr. Olver.

In his statement, defendant denied seeing any blood on Mr. Olver other than what was coming from his nose and denied seeing any blood coming from the back of Mr. Olver's head when he was standing by the sink. Defendant claimed he never saw blood on the back of Mr. Olver's head. Defendant also denied being a "trained boxer," but admitted to being in a "tournament."

Defendant further asserted in his statement that he subsequently became aware that the police were taking statements from individuals regarding the incident, but he initially did not know that the police were looking for him. Defendant explained that he was in Chalmette with his uncle when he was told the police "were on the corner," he panicked, left his truck, and walked. Defendant further stated that he thought Mr. Olver was still on life support, but he was scared and he knew he needed a lawyer.

In his statement, defendant also confirmed that after the altercation, he went about his normal activities the next couple of weeks and at no time came forward to talk to the police. Defendant further admitted that he got a new cell phone because he knew the police could "use his phone." Detective Bradley asked defendant if he got a new phone to avoid the police, and defendant replied affirmatively, stating that he did it "just till he got [his] bearings." Defendant explained that he broke his phone and it "got destroyed" while in the woods. When Detective Bradley asked where his phone was because it was not in the woods, defendant admitted that he got rid of his phone, but would not state where. Defendant denied taking Mr. Olver's phone.

After the jury finished watching defendant's statement, Detective Bradley confirmed in his testimony that (1) the police can use cell phone location data to locate a person and to track their movements; (2) he discussed this fact with defendant during his statement; (3) he initially tried to locate defendant through his cell phone; (4) he was never able to find defendant's phone; and (5) because he was not able to locate defendant's phone, it took longer for him to find defendant. Detective Bradly identified photographs taken of defendant after his statement, stating that he did not observe any injuries to defendant, nor did defendant claim that he was hurt by Mr. Olver or bleeding as a result of the incident.

Detective Bradley further testified that he had located Ms. Han, who told him that defendant threw the first punch. Detective Bradley stated that in her statement, Ms. Han also explained that there were "two altercations" between defendant and Mr. Olver, and then she left. During his testimony, Detective Bradley confirmed that: (1) photographs were taken of Ms. Han during her statement because she told him that Mr. Olver injured her arm; and (2) Ms. Han did not indicate that Mr. Olver punched or hit her.

Detective Bradley also verified that after defendant's arrest, he monitored multiple jail phone calls between defendant and Ms. Han. In the calls, defendant

and Ms. Han discussed the events that occurred at Mr. Olver's apartment, and Ms. Han repeatedly expressed that she would stand by his side.

Mr. Williams, who lived next door to Mr. Olver, testified that on May 14, 2024, he was in his apartment watching TV and he could also hear Mr. Olver watching TV because the apartment walls were extremely thin. He heard a woman screaming. While looking out his window, he saw defendant go into Mr. Olver's apartment, with a woman "hanging on his back trying to get him to stop." Mr. Williams testified that defendant and the woman were acting "hysterical," and "busted through the door and started wailing at [Mr. Olver]." He explained that because of the thin walls, he could hear fighting sounds. He stated that it sounded like someone was getting hit in the face or in the stomach. He also heard the woman repeatedly exclaim, "Stop it, you're going to kill him." Through his window, he also saw the woman throw her hands up in the air and head down the stairs, saying "Somebody's got to stop him. He's going to kill him."

Mr. Williams testified the fight lasted approximately 12-15 minutes. He said it became quiet and then it sounded like someone slammed into the wall and hit the ground. He stated that he could "actually feel the floor shaking" in his apartment. After about two minutes had passed, he heard the front door open. He looked through his window and saw defendant coming out of Mr. Olver's apartment. Defendant used both hands to close Mr. Olver's door "really quietly," "straightened out his clothes" and hair and walked down the stairs. Mr. Williams testified that approximately fifteen minutes later he still did not hear any sound coming from Mr. Olver's apartment and was worried. He walked outside of his apartment, and his other neighbors came out as well. He told his neighbors that they needed to check on Mr. Olver because defendant "beat the hell out of him." Mr. Williams said that he and his neighbors went into Mr. Olver's apartment, but he thought Ms. Mosbey went in first. He testified that things were knocked over, Mr. Olver was lying on the

floor, with a "puddle" of blood underneath his head and blood on the wall by the molding and was unresponsive. Mr. Williams said that the paramedics arrived and transported defendant to the hospital. Mr. Williams confirmed that he provided a statement to the police regarding the altercation and identified defendant as the perpetrator from a photographic lineup.

Ms. Mosbey, who functioned as the property manager at the Westgate apartments, testified that Mr. Olver worked "off-and-on" with her boyfriend, Frank Cedre, who lived with her. On May 14, 2024, she learned that Mr. Olver had been hurt and went to check on him. She knocked on Mr. Olver's door and when he did not respond, she opened the door, which was unlocked, and walked inside. She saw Mr. Olver lying in the hallway unconscious, with blood next to his head and a bloody towel and pillow nearby. She called his name, but he only responded one time with a "slight little" moan, and his eyes did not open. Because she was concerned, she called 9-1-1. Ms. Mosbey confirmed she spoke with the paramedics and the police. Ms. Mosbey confirmed that Mr. Cedre had told her that he had received a call from defendant. She told Mr. Cedre that she had "already checked" on Mr. Olver and notified the police.

Francisco Jesus Cedre,[3] Ms. Mosbey's boyfriend, testified that he was not present when the altercation occurred, but defendant, who was a friend and co-worker, contacted him afterwards. Defendant told him that he "might want to go check up on Gary." Mr. Cedre testified that he did not know what defendant meant; however, he eventually went to check on Mr. Olver, who he found unconscious. Mr. Cedre could not recall if defendant called him again that day but confirmed he may have called defendant to tell him that Mr. Olver was unconscious.

[3] Mr. Cedre was referred to by all witnesses as "Frank." Mr. Cedre testified that he had a stroke the prior year and it affected his memory.

Ms. Han testified that she knew defendant for approximately thirty years and was "pretty close" to him for the past eight years. She stated that on May 14, 2024, defendant picked her up from her sister's house in his truck, and they arrived at the Westgate apartments. Defendant informed her that Mr. Olver had been talking about her in a vulgar manner. Ms. Han testified that this had been going on for approximately a year, and she tried to ignore it. Defendant said that the night before, a mutual friend told him that Mr. Olver said she "sucked his d**k." Ms. Han testified that she had enough of the rumors and was concerned about her reputation. Ms. Han stated that she and defendant then saw Mr. Olver's van in the parking lot. She explained that she could not recall if it was defendant's or her idea to confront Mr. Olver. However, subsequently, when asked if she told the detective after the incident that defendant said "Come on. Let's go ask him," Ms. Han replied that would not have been correct. She contended that defendant did not insist she confront Mr. Olver "at all."

Ms. Han recalled walking to Mr. Olver's door first, explaining that she intended to confront Mr. Olver about the rumors. She claimed defendant was "in a relaxed state" as they walked up the stairs. Ms. Han stated she knocked, and Mr. Olver answered the door. Based on Mr. Olver's greeting, Ms. Han concluded that Mr. Olver was "fine that we were there." According to Ms. Han, when Mr. Olver opened the door, he held out his hand for a handshake. Ms. Han testified that she and defendant walked into the apartment, Mr. Olver closed the door, and she said, "Gary, we came here to have a conversation." She asked Mr. Olver if he had said anything to anyone to suggest there was anything between them. Defendant interrupted her stating "Faye, stop. That's not what Steve told you." Ms. Han explained that she then threw her hands up and said, "Winston, you're absolutely right." She then asked Mr. Olver if he told Steve, "Faye sucked my d**k." She said that when she said this, defendant was right behind her. Ms. Han testified that Mr.

Olver grabbed her arm, pulled her aside, and defendant and Mr. Olver exchanged "three or four" punches. She could not remember who threw the first punch, but she assumed it was Mr. Olver "because he got past" her. She denied telling the police that defendant punched Mr. Olver first but conceded that if defendant told the police that he punched Mr. Olver first, his recollection would be "the most accurate." Ms. Han testified that she yelled, "Stop. Stop. That's not what we're here for. Stop," and they stopped. She explained that Mr. Olver grabbed her with enough force that it ripped her skin and she bled but confirmed that he was moving her out of his way and he did not punch her.

Ms. Han further explained that after defendant and Mr. Olver stopped fighting, Mr. Olver took a step toward his sink, took his glasses off, and started wiping his glasses and his ear. While she was explaining that they were only there for a conversation, Ms. Han testified that Mr. Olver suddenly dropped his glasses and went after defendant again. Mr. Olver and defendant started fighting; she yelled at them to stop, and then she walked out the door. As she was going out the door, Ms. Han testified that she could "see out of [her] vision, and [she] heard" what sounded like "a wreck happened only with bodies," and defendant and Mr. Olver were fighting again. Ms. Han also testified that Mr. Olver "never spoke a word." She left the apartment complex and walked to a friend's house nearby.

Ms. Han said that she spoke to defendant later that night and he told her that after the fight with Mr. Olver, he went downstairs to the bar and ordered beers for him and Mr. Olver. Defendant also told her that he had a friend check on Mr. Olver; he was told Mr. Olver was sleeping, and later he was told Mr. Olver had left in an ambulance and was taken to the hospital. She told defendant that Mr. Olver could not have gone to the hospital because of the fight because it was not a "vicious" fight. Ms. Han confirmed that she spoke to defendant a few times before he was arrested and spoke to him while he was in jail. Ms. Han further confirmed that she

gave a statement to the police. She asserted that during the altercation, she never said, "Stop it. You're going to kill each other." She explained that if defendant told the police that she said this, defendant misinterpreted or did not repeat exactly what she said.[4] Ms. Han further testified that officers took photographs of the injuries on her arms when she gave her statement. Ms. Han's statement was not admitted into evidence.

Dr. Vanessa Piazza, an expert in the field of emergency medicine, testified that she treated Mr. Olver at University Medical Center ("UMC") on May 14, 2024. Mr. Olver was unconscious and was unable to communicate with medical staff. Dr. Piazza testified that Mr. Olver suffered "protein calorie malnutrition," "respiratory failure after trauma" (which required intubation), a rib fracture, a scalp laceration, a subarachnoid hemorrhage (a brain bleed), a traumatic brain injury ("TBI"), a subdural hematoma (bruising or bleeding under dural layer of the brain), and a carotid artery injury. She explained that his intubation was eventually transitioned to a tracheostomy, or what is considered life support. Dr. Piazza further noted bruising by defendant's left eye, swelling on the side of his face, bruising on his arms, and on the top of his head. Dr. Piazza stated that based on Mr. Olver's injuries and age, upon his admission to UMC she would have given him a prognosis of 60% mortality. She explained that three to four days into his hospitalization, she would have given him a prognosis of 75% mortality. Based off his injuries and what was relayed to her by EMS, Dr. Piazza testified that he likely sustained more than one hit. Dr. Piazza explained that when Mr. Olver was discharged from the hospital, he went to hospice care because of his condition. He eventually died on May 28, 2024.

[4] Ms. Han claimed she never used the word "kill," and that she said, "I'm not going to stand here and watch you two a**holes try and murder one another."

On cross-examination, Dr. Piazza confirmed that the blood tests showed that Mr. Olver had cocaine metabolite and amphetamine in his system and weighed 220 pounds upon admission to the hospital.

Dr. Randall Bissessar, an expert in the field of forensic pathology, testified that he conducted the autopsy of Mr. Olver on May 29, 2024, authored a report, and identified photographs were taken of Mr. Olver during the autopsy. Dr. Bissessar stated his autopsy findings included traumatic brain injuries (scalp, subdural, and subarachnoid hemorrhages and an intraparenchymal bleed), nondisplaced fractures of the ribs (both sides of his ribs), and evidence of medical intervention (a tracheostomy and a six-centimeter stapled healing laceration on the left side of the scalp). Dr. Bissessar testified that Mr. Olver, a 62-year-old male, died as a result of traumatic brain injuries, and he classified the manner of death as a homicide.

LAW and ANALYSIS

On appeal, defendant contends that (1) the trial court erred in imposing an excessive sentence for his conviction for obstruction of justice; and (2) he was denied effective assistance of counsel because his counsel failed to file a motion to reconsider sentence.[5]

[5] Although defendant did not challenge it on appeal, we have considered the sufficiency of the evidence, pursuant to State v. Raymo, 419 So.2d 858 (La. 1982). After review, we find the State presented sufficient evidence under Jackson v. Virginia, 443 U.S. 307, 318-319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979), to establish the essential elements of second degree murder (count one) and obstruction of justice (count two). As to second degree murder, defendant admitted in his statement that (1) he hit Mr. Olver first; (2) he punched Mr. Olver several more times; (3) Mr. Olver fell to the floor and was unconscious the last time he punched him; (4) he threw water on Mr. Olver and wiped the blood off of Mr. Olver's face; (5) he had several opportunities to leave during the altercation but chose not to do so; and (6) despite Mr. Olver being unconscious and bleeding, he chose to leave Mr. Olver without getting any help for him. In his statement to the court prior to sentencing, defendant in his statement to the court, further admitted that he hit Mr. Olver eight or nine times, the victim fell to the floor, and the victim was unconscious the final time he punched him. Additionally, the testimony from the State's witnesses provided that (1) Mr. Williams, a neighbor, saw defendant and Ms. Han push their way into Mr. Olver's apartment, he heard defendant and Mr. Olver fight, he heard Ms. Han yell "Stop it. You're going to kill him;" (2) neighbors and responding officers found Mr. Olver in his apartment with blood by his head; (3) Mr. Olver suffered several injuries, including a traumatic brain injury (TBI) and (3) Mr. Olver died as a result of the TBI, and his manner of death was classified as a homicide. For obstruction of justice, defendant admitted that (1) he knew the police could "use his cell phone;" (2) he broke his cell phone, got rid of it, and got a new phone; and (3) he obtained a new phone to evade police. Detective Bradley testified that because he could not locate defendant's cell phone, it took them longer to find defendant.

Excessive Sentence

In his first assignment of error, defendant contends that the trial court erred by imposing the maximum sentence for obstruction of justice, concurrently with the mandatory life sentence for the crime of second degree murder, without explaining its reasoning. He argues that the imposition of the maximum term of incarceration for obstruction of justice, "for this minor infraction of the crime of obstruction of justice" upon a first offender, which was clearly related to the second degree murder conviction, is not supported by the record and is excessive. Defendant also contends the trial court did not comply with La. C.Cr.P. art. 894.1. Additionally, he argues that because the trial court did not order a pre-sentence investigation (PSI), even though a PSI is not required, the trial court neglected to learn anything about him other than the facts of the crimes prior to sentencing.[6]

At the sentencing hearing on April 16, 2025, Mr. Olver's sister, Louise Wasko, gave a victim impact statement. Ms. Wasko stated that Mr. Olver was the youngest of six children. Ms. Wasko was appalled by defendant's statement that he and Mr. Olver were friends, expressing that friends do not beat their friend over "something that might have been said." Ms. Wasko stated that she and her sister sat with Mr. Olver in the hospital and the photographs of her brother did not accurately describe the horrible extent of his injuries. She stated that Mr. Olver only had marks on his forearms, not his knuckles, which showed that he was trying to protect himself from defendant. Ms. Wasko also stated that she and her sister had to tell their older brother, who was recovering from a stroke, about Mr. Olver's condition, and it

---

6 La. C.Cr.P. art. 875 A(1) provides, in relevant part, that "[i]f a defendant is convicted of a felony offense ... the court ***may*** order the Department of Public Safety and Corrections, division of probation and parole, to make a presentence investigation." [Emphasis added.] The use of the word "may" in this article reflects that ordering a PSI is discretionary with the trial court. State v. Powell, 23-371 (La. App. 5 Cir. 2/28/24), 383 So.3d 1056, 1063 (citing to State v. Jones, 11-87 (La. App. 5 Cir. 12/13/11), 81 So.3d 835, 840). The Louisiana Supreme Court has held that a PSI is an aid to the court, not a right of the defendant, and the court is not required to order that the report be prepared. Id. (citing State v. Bell, 377 So.2d 275 (La. 1979)). Accordingly, this argument is without merit.

"damn near killed him" to hear this information because defendant had previously worked for him.

Ms. Wasko stated that the neurologist told her family that because of the extensive damage to his brain stem, it would take a miracle for Mr. Olver to recover, and even if he did, he would have to live in a facility to be cared for the rest of his life. Ms. Wasko explained that she and her sister had to make the decision to move their brother to hospice care and watched him suffer through pneumonia. She stated that Mr. Olver never regained consciousness. Ms. Wasko stated that she knew this was not the first time defendant had been in a situation where he lost his temper and hurt someone but "at least this will be the last." Ms. Wasko expressed that because of defendant, her family would never be able to see, hold, or talk to her brother again. Her family felt that defendant deserved every day that he would be in prison.

Afterwards, defendant made a statement. Defendant contended that he was truly sorry and that this was a tragedy for both Mr. Olver and for himself. Defendant explained that he went to Mr. Olver's apartment to confront him about what he said and did not intend to fight, kill, or murder. He stated he would not have brought anyone with him, like Ms. Han, if he thought someone was going to "get killed," stating again that this was a tragedy for everyone involved.

Defendant stated that the State's argument that he beat Mr. Olver to the point he was unconscious was false and an exaggeration because "[t]here was only eight to nine punches thrown by [him] the entire time in twenty minutes…that's it." He asserted that he never hit or kicked Mr. Olver when he was down and it was not a "beat-down." Defendant admitted that he threw the first two punches and Mr. Olver fell against the wall but claimed it was only after Mr. Olver grabbed Ms. Han's arm, which bleed, and "brushed up against her." At that point, he and Ms. Han moved towards the middle of the room and Mr. Olver stumbled towards the bathroom, falling into the cabinet door, the bar, and falling to the ground twice. He explained

that this was the sound Mr. Williams heard, it was not him punching or beating Mr. Olver and no furniture was moved. Defendant stated that when Mr. Olver came out of the bathroom, they started wrestling. He admitted that he hit Mr. Olver two more times, but insisted Mr. Olver was "up immediately," and "no one was beatdown." He acknowledged that he should have left at this point, but he did not.

Defendant repeated that he did not want to fight Mr. Olver and was actually arguing with Ms. Han when they went to Mr. Olver's apartment. He expressed that he only wanted Ms. Han to confront Mr. Olver. When they went to Mr. Olver's apartment, they knocked, announced themselves, and Mr. Olver let them in. He went on to state that the bruises on Mr. Olver's forearms were not from punches; rather, they were from Mr. Olver falling and hitting the bar and cabinet and from protecting his face. Defendant explained that Mr. Olver weighed two hundred and twenty pounds and was eighty pounds overweight. Once again, defendant commented that Mr. Olver "was protecting himself."

Defendant further asserted that he did not drink the beers he ordered, stating there should have been another photograph showing him "throwing away the beers, a whole beer and a half of a beer." He contended that he "didn't drink but a few swallows out of both of them." Defendant explained he went back to check on Mr. Olver, who was alive because he threw water on his face and Mr. Olver shook his head twice and mumbled "stop." Defendant acknowledged that he left but knew he should not have done so. He contended that Mr. Olver was regaining consciousness. Defendant asserted that he called to check on Mr. Olver and was told he was sleeping, which means he was fine. He was told another time to come back and then a third call to tell him Mr. Olver's already left. Defendant stated that he would have called 9-1-1 had he known Mr. Olver's condition. Defendant claimed that Mr. Olver had a "drug-infused look" on his face during the altercation and had cocaine and

methamphetamines in his system. He asserted there were two victims in this case and "words could kill."

Before sentencing defendant, the trial judge emphasized that defendant was not a victim, distinguishing him from the true victims present in the courtroom and Mr. Olver. The trial judge criticized defendant for equating his suffering with that of Mr. Olver and his family and stated that defendant's suffering was self-inflicted due to his own decisions. The trial judge pointed out that defendant had several opportunities to leave the situation but chose to leave only after Mr. Olver was dying. The trial judge further censured defendant for the derogatory remarks he made about Mr. Olver (*i.e.*, stating he was on drugs and overweight), emphasizing that Mr. Olver's death was a result of defendant's actions. The trial judge stated that despite the situation being out of control and having opportunities to leave, defendant chose to continue the altercation. She stated that the "eight to nine" punches defendant claimed he performed did not match the severity of Mr. Olver's injuries. The judge chastised defendant for engaging in a fight over trivial matters, especially with a much older man, emphasizing that he should have never initiated the confrontation. The judge concluded that the case was a result of defendant's decisions alone, noting that Mr. Olver was merely at home and did not seek out the conflict, which ultimately led to his death.

The trial judge further stated that she considered the sentencing guidelines of La. C.Cr.P. art. 894.1. The trial court then sentenced defendant to life imprisonment without benefit of parole, probation, or suspension of sentence for the conviction of second degree murder and forty years imprisonment at hard labor for the conviction of obstruction of justice, with both counts to run concurrent with each other. Defense counsel requested the trial court to note his objection.

Failure to make or file a motion to reconsider sentence, or to state the specific grounds upon which the motion is based, limits a defendant to a review of the

sentence for constitutional excessiveness only. State v. Gassenberger, 23-148 (La. App. 5 Cir. 12/20/23), 378 So.3d 820, 840. This court has held that when the specific grounds for objection to the sentences, including alleged non-compliance with La. C.Cr.P. art. 894.1, are not specifically raised in the trial court, then these issues are not included in the bare review for constitutional excessiveness, and the defendant is precluded from raising these issues on appeal. Id. Here, defense counsel only made a general oral objection to defendant's sentence and failed to file a motion to reconsider sentence. Further, defense counsel failed to specifically object to the trial court's alleged noncompliance with La. C.Cr.P. art. 894.1. Therefore, because the specific grounds for objection to the sentence, including noncompliance with La. C.Cr.P. art. 894.1, were not raised in the trial court, we find defendant is limited to a review of his obstruction of justice sentence for constitutional excessiveness.

The Eighth Amendment to the United States Constitution and Article I, § 20 of the Louisiana Constitution prohibit the imposition of excessive punishment. State v. Haynes, 23-494 (La. App. 5 Cir. 7/31/24), 392 So.3d 1160, 1164. 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 purposeful imposition of pain and suffering and is grossly out of proportion to the severity of the crime. Id. A sentence is grossly disproportionate if it shocks the sense of justice when the crime and punishment are considered in light of the harm done to society. Id.

In reviewing a trial court's sentencing discretion, three factors are considered: 1) the nature of the crime; 2) the nature and background of the offender; and 3) the sentence imposed for similar crimes by the same court and other courts. State v. Fuentes, 23-502 (La. App. 5 Cir. 7/31/24), 392 So.3d 1167, 1173. However, there is no requirement that specific matters be given any particular weight at sentencing. Id. "A trial court should consider the defendant's personal history such as age,

family ties, marital status, health, employment record, as well as his prior criminal record, seriousness of offense and the likelihood of rehabilitation in determining an appropriate sentence." State v. Adams, 23-427 (La. App. 5 Cir. 4/24/24), 386 So.3d 676, 686.

A trial judge is in the best position to consider the aggravating and mitigating circumstances of a particular case and, therefore, is given broad discretion when imposing a sentence. State v. Barnes, 23-208 (La. App. 5 Cir. 12/27/23), 379 So.3d 196, 204, writ denied, 24-136 (La. 9/24/24), 392 So.3d 1141. Thus, this court will not set aside a sentence as excessive absent clear abuse of the trial court's broad discretion. State v. Thach, 24-437 (La. App. 5 Cir. 4/2/25), 413 So.3d 1147, 1163. On appeal, the relevant question is whether the trial court abused its broad sentencing discretion, not whether another sentence might have been more appropriate. State v. McMillan, 23-317 (La. App. 5 Cir. 12/27/23), 379 So.3d 788, 802, writ denied, 24-131 (La. 9/4/24), 391 So.3d 1057. An 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.

Here, defendant was convicted of second degree murder and obstruction of justice. Defendant was sentenced to life imprisonment at hard labor without the benefit of parole, probation, or suspension of sentence on count one, second degree murder, and forty years imprisonment at hard labor on count two, obstruction of justice, to be served concurrently. On appeal, defendant only challenges the trial court's sentence for his obstruction of justice conviction, not his life sentence for second degree murder.

As to defendant's conviction for obstruction of justice, at the time of the offense,[7] La. R.S. 14:130.1 B(1), provided that when the obstruction of justice

[7] See State v. Sugasti, 01-3407 (La. 6/21/02), 820 So.2d 518, 520 (The law in effect at the time of the commission of the offense is determinative of the penalty which the convicted accused must suffer.)

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. Here, the trial court sentenced defendant to forty years imprisonment at hard labor, the maximum term of imprisonment for obstruction of justice, but did not impose the discretionary fine.

Based on our review of the record, we find that the sentence for obstruction of justice was not excessive. The testimony and evidence showed that defendant and Ms. Han went to Mr. Olver's apartment because he wanted Ms. Han to confront Mr. Olver about the vulgar rumors regarding Ms. Han. Defendant admitted that he hit Mr. Olver first. Despite several opportunities to leave Mr. Olver's apartment, defendant chose to remain and continued to beat Mr. Olver so severely that his injuries, including a traumatic brain injury, eventually resulted in this death. Defendant then attempted to evade the police by getting a new phone. Detective Bradley confirmed that because he was not able to locate defendant's phone, it took longer to find defendant. The testimony and evidence do not support defendant's contention that he did not mean to kill Mr. Olver. Photographs of Mr. Olver, and testimony from the State's witnesses, including Drs. Piazza and Bissessar, and defendant's recorded statement further demonstrate the severity of the offense. Additionally, defendant's comments and explanation of the events leading to Mr. Olver's death during the sentencing hearing showed that defendant was still attempting to justify, lessen and/or avoid responsibility for his actions. Further, in her victim impact statement, Mr. Olver's sister, Ms. Wasko, described Mr. Olver's condition after the beating from defendant, his eventual death, and the impact on her family's lives. The record indicates that in sentencing defendant for second degree murder and obstruction of justice, the trial court considered the testimony and evidence at trial, Ms. Wasko's victim impact statement, defendant's explanation and

comments at the sentencing hearing, and the sentencing guidelines of La. C.Cr.P. art. 894.1.

This court, as well as other Louisiana courts, have upheld forty-year sentences for obstruction of justice convictions. See Thach, 413 So.3d at 1164 (where this court found that a maximum forty-year sentence for obstruction of justice was not excessive where the defendant was convicted of second degree murder, and this court noted the severity of the crime and defendant's lack of responsibility). See also State v. Ford, 24-197 (La. App. 5 Cir. 2/26/25), 406 So.3d 652, 681, writ denied, 25-356 (La. 5/20/25), 409 So.3d 216; State v. Royal, 03-439 (La. App. 5 Cir. 9/30/03), 857 So.2d 1167, 1175, writ denied, 03-3172 (La. 3/19/04), 869 So.2d 849; State v. Harvey, 21-730 (La. App. 4 Cir. 5/25/22), 345 So.3d 1043, writ denied, 22-953 (La. 9/20/22), 346 So.3d 803; State v. Duckett, 19-319 (La. App. 4 Cir. 12/18/19), 288 So.3d 167, writ denied, 20-135 (La. 7/24/20), 299 So.3d 73; State v. Cawthorne, 18-155 (La. App. 3 Cir. 10/3/18), 257 So.3d 717, writ denied, 18-1899 (La. 4/8/19), 267 So.3d 607; State v. Ayala, 17-1041 (La. App. 3 Cir. 4/18/18), 243 So.3d 681; State v. Roberson, 40,809 (La. App. 2 Cir. 4/19/06), 929 So.2d 789; State v. McKnight, 98-1790 (La. App. 1 Cir. 6/25/99), 739 So.2d 343, writ denied, 99-2226 (La. 2/25/00), 755 So.2d 247.

Considering the severity of the crime and comparable sentences, we find the imposed sentence for obstruction of justice is neither excessive nor grossly disproportionate and it does not constitute a needless infliction of pain or suffering. Accordingly, given the severity of Mr. Olver's murder, defendant's actions to avoid the police, and the impact on Mr. Olver's family, we find that the trial court did not abuse its discretion by imposing the maximum term of imprisonment of forty years for defendant's conviction of obstruction of justice.

Ineffective Assistance of Counsel

In his second assignment of error, defendant argues his counsel was ineffective because he failed to file a motion to reconsider sentence. He avers that any claim that his arguments regarding excessive sentence are foreclosed by his trial counsel's failure to file a motion to reconsider sentence should be considered to have resulted from a deficiency in representation, citing to Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

A defendant is entitled to effective assistance of counsel under the Sixth Amendment to the United States Constitution and Article I, § 13 of the Louisiana Constitution of 1974. State v. Gatson, 21-156 (La. App. 5 Cir. 12/29/21), 334 So.3d 1021, 1039-40. To prove ineffective assistance of counsel, defendant must show: (1) that counsel's performance was deficient, that is, that the performance fell below an objective standard of reasonableness under prevailing professional norms; and (2) that the deficient performance prejudiced the defense. Strickland, 466 U.S. 668, 104 S.Ct. 2052; State v. Robinson, 23-277 (La. App. 5 Cir. 6/28/23), 368 So.3d 737, 742, writ denied, 23-1042 (La. 12/5/23), 373 So.3d 979.

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 and appropriate, rather than by direct appeal. State v. Howard, 24-145 (La. App. 5 Cir. 12/18/24), 409 So.3d 915, 938, writ denied, 25-96 (La. 4/8/25), 405 So.3d 566. However, because the record in the instant case contains sufficient evidence to rule on the merits of defendant's ineffective assistance of counsel claim and the issue was properly raised in an assignment of error on appeal, we will address this claim in the interest of judicial economy. Thus, although the grounds asserted on appeal for challenging defendant's sentence were not preserved as discussed above, we will consider defendant's specific objections to the sentence to properly assess his claim

of ineffectiveness of counsel. See State v. Robertson, 23-525 (La. App. 5 Cir. 10/23/24), 398 So.3d 767, 780; State v. King, 00-1434 (La. App. 5 Cir. 5/16/01), 788 So.2d 589, 593, writ denied, 01-2456 (La. 9/20/02), 825 So.2d 1157.

As to defendant's contention that the trial court failed to adequately consider the factors of La. C.Cr.P. art. 894.1 and failed to articulate any reasons for the sentence imposed for obstruction of justice, this argument lacks merit. The trial judge made a detailed statement on the record before imposing defendant's sentences for second degree murder and obstruction of justice and specifically stated that she considered the sentencing guidelines set forth in La. C.Cr.P. art. 894.1. Additionally, the record and facts in the instant case support the sentence imposed. See State v. Acevedo, 22-124 (La. App. 5 Cir. 12/28/22), 356 So.3d 1137, 1146, writ denied, 23-112 (La. 11/15/23), 373 So.3d 76, citing State v. Garrison, 15-285 (La. App. 5 Cir. 12/23/15), 184 So.3d 164, 171, writ denied, 16-258 (La. 2/10/17), 215 So.3d 700) ("Where the record clearly shows an adequate factual basis for the sentence imposed, remand for resentencing is unnecessary even where there has not been full compliance with Article 894.1.").

Regarding the allegation that defense counsel failed to file a motion to reconsider sentence, the mere failure to file a motion to reconsider sentence does not in and of itself constitute ineffective assistance of counsel. See State v. Robertson, 23-525 (La. App. 5 Cir. 10/23/24), 398 So.3d 767, 780 (citing State v. Fairley, 02-168 (La. App. 5 Cir. 6/26/02), 822 So.2d 812, 816). A defendant must also "show a reasonable probability that, but for counsel's error, his sentence would have been different." Id. In this case, defendant failed to show that trial counsel performed deficiently in failing to file a motion to reconsider sentence or that there is a reasonable probability that but for counsel's failure to do so the sentence would have been different.

Considering the foregoing, we find the trial court did not abuse its discretion in imposing the forty-year sentence at hard labor for obstruction of justice. We further find that defendant has not demonstrated that he received ineffective assistance of counsel because defense counsel failed to file a motion to reconsider sentence. Thus, this assignment of error is without merit.

ERRORS PATENT

The record was reviewed for errors patent according to the mandates of 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). Our review reveals no errors patent that require corrective action.

DECREE

Accordingly, for the reasons set forth herein, defendant's convictions and sentences are affirmed.

CONVICTIONS AND SENTENCES AFFIRMED

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

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 **APRIL 10, 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-303

E-NOTIFIED
24TH JUDICIAL DISTRICT COURT (CLERK)
HONORABLE NANCY A. MILLER (DISTRICT JUDGE)
HONORABLE PAUL D. CONNICK, JR. (APPELLEE)
CHRISTOPHER A. ABERLE (APPELLANT)
MONIQUE D. NOLAN (APPELLEE)
LEO M. AARON (APPELLEE)
MOLLY LOVE (APPELLEE)
THOMAS J. BUTLER (APPELLEE)

MAILED
WINSTON BARTHOLOMEW #253880
(APPELLANT)
DAVID WADE CORRECTIONAL CENTER
670 BELL HILL ROAD
HOMER, LA 71040