NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 KA 0995

STATE OF LOUISIANA

VERSUS

JOHN RYAN STEPHENS

Judgment Rendered: February 10, 2012.

* * * * *

On Appeal from the
23rd Judicial District Court,
In and for the Parish of Ascension,
State of Louisiana
Trial Court No. 12,717

The Honorable Jane Triche-Milazzo, Judge Presiding

* * * * *

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* * * * *

BEFORE: CARTER, C.J., PARRO AND HIGGINBOTHAM, JJ.

CARTER, C.J.

The defendant, John Ryan Stephens, was charged by grand jury indictment with aggravated rape, a violation of Louisiana Revised Statutes section 14:42. The defendant pled not guilty and, following a jury trial, was found guilty of the responsive offense of attempted aggravated rape. *See* La. Rev. Stat. Ann. § 14:27. He was sentenced to forty-five years imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. The defendant filed a motion to reconsider sentence, which was denied. The defendant now appeals, designating four assignments of error. We affirm the conviction and sentence.

FACTS

On March 25, 2000, eight-year-old M.C., who lived in a trailer park in Prairieville, Ascension Parish, was walking home from her friend's house. M.C.'s mother was at work, and she had left M.C. under the care of M.C.'s older brother, who was in the family's trailer. M.C. approached the defendant and his younger brother, who were sitting outside of an abandoned trailer. M.C. knew the brothers because they lived in the same trailer park as she did. The defendant was seventeen years old. The three played for a while with some Hot Wheels cars that M.C. had. The defendant and his brother then told M.C. they had something to show her behind the trailer.

At the trial of the matter, M.C. testified that when she got to the back of the trailer, they told her to take her clothes off. It was dark and there was no one else around. M.C. complied because she was scared. She was then told to lie down, which she did. The defendant sucked M.C.'s breast and touched her vagina. The defendant's brother tried to insert his penis into M.C.'s vagina. M.C. told him it hurt, so he stopped. Then the defendant tried to insert his penis into her vagina. She repeated that it hurt, and the defendant stopped. The defendant and his brother

each tried to engage in vaginal sex with M.C. four or five times. The defendant's brother also forced M.C. to perform oral sex on him. When M.C. screamed for her older brother because of the pain, the defendant and his brother stopped and got up. M.C. put her clothes back on and, before she headed home, the defendant told her not to tell anyone.

M.C. also testified that prior to this incident, she was in a van going to church with the defendant and his family. There was not enough sitting room in the van, so M.C. had to sit on the defendant's lap. The defendant began touching M.C. on her vagina. She asked him what he was doing, and he told her not to tell anyone.

Sergeant Byron Arceneaux, with the Ascension Parish Sheriff's Office, interviewed the defendant during his investigation of M.C.'s case. Sergeant Arceneaux informed the that defendant he was being questioned for allegations against him of aggravated rape and oral sexual battery. Initially, the defendant denied that he had done anything to M.C. However, after further questioning, the defendant told Sergeant Arceneaux that at one point, he had touched M.C. between her legs.

ASSIGNMENT OF ERROR NO. 1

In his first assignment of error, the defendant argues the trial court erred in denying the motion to suppress his "confession." Specifically, the defendant contends that his statement was not knowingly and intelligently made because he did not understand his *Miranda* rights or the consequences of waiving those rights.

Before a confession can be introduced into evidence, it must be affirmatively shown that it was free and voluntary and not made under the influence of fear, duress, intimidation, menaces, threats, inducements or promises. La. Rev. Stat. Ann. § 15:451; *State v. Brown*, 481 So. 2d 679, 684 (La. App. 1st Cir. 1985), *writ*

denied, 486 So. 2d 747 (La. 1986). It must also be established that an accused who makes a confession during custodial interrogation was first advised of his *Miranda* rights. *Miranda v. Arizona*, 384 U.S. 436 (1966). The trial court must consider the totality of the circumstances in determining whether a confession is admissible. *State v. Hernandez*, 432 So. 2d 350, 352 (La. App. 1st Cir. 1983).

Although the burden of proof is generally on the defendant to prove the grounds recited in a motion to suppress evidence, such is not the case with the motion to suppress a confession. In the latter situation, the burden of proof is with the State to prove the confession's admissibility. *See* La. Code Crim. Proc. Ann. art. 703D. In determining whether the ruling on defendant's motion to suppress was correct, we are not limited to the evidence adduced at the hearing on the motion. We may consider all pertinent evidence given at the trial of the case. *State v. Chopin*, 372 So. 2d 1222, 1223 n.2 (La. 1979).

When a trial court denies a motion to suppress, factual and credibility determinations should not be reversed in the absence of a clear abuse of the trial court's discretion, i.e., unless such ruling is not supported by the evidence. *See State v. Green*, 94-0887 (La. 5/22/95), 655 So. 2d 272, 280-81. However, a trial court's legal findings are subject to a *de novo* standard of review. *See State v. Hunt*, 09-1589 (La. 12/1/09), 25 So. 3d 746, 751.

The State may rely on the presumption of sanity provided in Louisiana Revised Statutes section 15:432, leaving to the defendant the initial burden of proving the existence of a mental abnormality which, under the circumstances, may have destroyed the voluntary nature of his confession. *State v. Waymire*, 504 So. 2d 953, 958 (La. App. 1st Cir. 1987). Because a defendant is presumed competent, he has the burden of proving a mental defect such that he was unable to understand his *Miranda* rights and was, therefore, incompetent to waive them.

State v. Ondek, 584 So. 2d 282, 292-93 (La. App. 1st Cir.), *writ denied*, 586 So. 2d 539 (La. 1991). In the absence of such a showing, the State retains the ultimate burden of proving beyond a reasonable doubt that the confession was voluntary. *Green*, 655 So. 2d at 279.

The Louisiana Supreme Court has recognized that a diminished intellectual capacity does not of itself vitiate the ability to knowingly and intelligently waive constitutional rights and make a free and voluntary confession. *See State v. Tart*, 93-0772 (La. 2/9/96), 672 So. 2d 116, 126, *cert. denied*, 519 U.S. 934 (1996). The critical factors are whether the defendant was able to understand the rights explained to him and voluntarily gave the statement. *Tart*, 672 So. 2d at 126. Once the trial judge has determined that the State has met its burden of proof, his decision is entitled to great weight on review. *State v. Lefevre*, 419 So. 2d 862, 865 (La. 1982); *see State v. Patterson*, 572 So. 2d 1144, 1150 (La. App. 1st Cir. 1990), *writ denied*, 577 So.2d 11 (La. 1991).

The specific issue raised by the defendant in this matter concerns his ability to comprehend his *Miranda* rights while being questioned by Sergeant Arceneaux. *See Green*, 655 So. 2d at 279. Initially we note that the defendant, while being questioned by Sergeant Arceneaux, did not confess to raping M.C. At both the trial and the hearing on the motion to suppress, Sergeant Arceneaux testified that at first, the defendant denied any involvement with M.C., but that, upon further questioning, the defendant admitted only that he had touched M.C. between her legs. Sergeant Arceneaux testified at trial that the defendant, during the interview, also said that he gave M.C. money.

According to the defendant, the State did not establish he understood his *Miranda* rights because one of the doctors appointed to the Sanity Commission indicated that he did not appear to fully understand his legal rights. After Sergeant

Arceneaux *Mirandized* the defendant, the defendant had a question about the warning that anything he said could be used against him. The defendant contends that Sergeant Arceneaux, instead of explaining the warning, invited the defendant's mother to be present during questioning and "merely re-read him the form." The defendant asserts nothing else was done and that these "tactics simply pay lip service to the *Miranda* Court and fail to honor the purpose behind the warnings themselves."

Prior to trial, the trial court appointed a Sanity Commission to determine the defendant's competence to stand trial. The three doctors who evaluated the defendant all found he was competent to stand trial. Dr. John Fraiche, M.D., concluded in his report that the defendant's "mental capacities are somewhat limited." As pointed out by the defendant in his brief, Dr. Fraiche also noted that the defendant "does not appear to fully understand what his legal rights are, but he does seem to be able to distinguish between guilty and not guilty, and what a conviction may entail." Dr. Fraiche's report stated the defendant had been home schooled since ninth grade, and that, according to the defendant's uncle, the defendant "is from a very rigid fundamentalist Baptist family that has home schooled their children and that he has had very little exposure to the outside world."

Dr. Charles P. Vosburg, a psychologist with a Ph.D., conducted IQ testing of the defendant and determined he had a Full Scale IQ of 81. The defendant was also administered the Georgia Court Competency Test. Dr. Vosburg noted in his report that scores of 70 and above fall in the "competent to stand trial" range. The defendant obtained a score of 92 on this test, which indicated he had a factual knowledge of the charges against him and an adequate factual ability to assist his lawyer in his defense. Dr. Vosburg noted the defendant's level of intellectual

functioning was in the low average range. Of particular importance, Dr. Vosburg made the following finding: "He should be able to apply his legal rights through the assistance of his lawyer in the court setting. He is capable of testifying in his own defense. He has no mental condition which is likely to deteriorate under the stress of trial."

Dr. Harminder Mallik, M.D., who also evaluated the defendant, found that he knew what the charges against him meant; he knew that he could hire a lawyer, but that one was appointed to him because he did not have the funds; he correctly identified the roles of the jury and witnesses; and he understood the pleas available to him. Dr. Mallik concluded that the defendant had a rational and factual understanding of the proceedings against him and had sufficient ability to consult with his lawyer with a reasonable degree of rational understanding.

At both the trial and the hearing on the motion to suppress the defendant's statement, Sergeant Byron Arceneaux testified that he interviewed the defendant. At the start of the interview, the sergeant advised the defendant of his rights by reading from an "Advise of Rights" form. Sergeant Arceneaux testified that after receiving his rights, the defendant had a question about the second right read to him, namely that anything he said could be used against him in court. At that point, Sergeant Arceneaux brought the defendant's mother in and had her sit with her son. Sergeant Arceneaux testified at the motion to suppress hearing that the defendant was again *Mirandized*, "[a]nd at that time, he said he understood." At trial, regarding *Mirandizing* the defendant again, Sergeant Arceneaux testified, "Then I went and explained to him his rights again." The prosecutor then asked if the defendant acknowledged that he understood his rights. Sergeant Arceneaux responded, "He did." On cross-examination at trial, the sergeant was asked, "And so you did not take any steps to see whether or not he had the intellectual capacity

to understand any of these rights, did you?" Sergeant Arceneaux responded, "Well, I talked to him, and back and forth, he -- you know, he seemed competent or capable of answering my questions."

The State introduced the rights form into evidence at the motion to suppress hearing and at trial. The form, dated March 28, 2000, lists the *Miranda* rights, and was twice signed by the defendant. The defendant's first signature attests that "I have read this statement of my rights and I understand what my rights are." The defendant's second signature indicates his consent to questioning, which asked, "Are you willing to answer questions at this time without a lawyer present?" To this question, the defendant answered "yes." The next question was, "Have any threats or promises been made to you or have you been coerced or pressured to answer questions or give up any of your rights?" The defendant answered, "No." Sergeant Arceneaux and the defendant's mother signed the rights form as witnesses.

At the motion to suppress hearing, the trial court made the following ruling:

> All right. The Court is going to deny the Motion to Suppress. I believe the evidence indicates that the defendant was fully apprised of his constitutional rights, and that the officer additionally contacted his mother, had his mother in the room at the time.

Following the trial court's ruling, defense counsel asserted there had been no showing of a knowing and intelligent waiver because one of the doctors of the Sanity Commission felt the defendant did not fully understand his rights. As discussed, Dr. Fraiche noted that the defendant "does not appear to fully understand what his legal rights are[.]" However, Drs. Vosburg and Mallik, who also evaluated the defendant, found, respectively, that he should be able to apply his legal rights through the assistance of his lawyer and that he had a rational and factual understanding of the proceedings against him. In response to defense

counsel's objection regarding Dr. Fraiche's report, the trial court maintained its ruling on the motion to suppress, stating the following:

> The Court, after considering the report of Dr. Fraiche, which is, as previously indicated, already in the record -- I considered that, but I also reviewed Dr. Vosburg and Dr. Malik's [sic] report, both of which indicate that the defendant has a low average IQ and appears to understand the nature of the proceedings and was able to assist in his defense.
>
> The Court is going to continue its denial of the Motion to Suppress. Your objection is noted for the record[.]

We see no reason to disturb the trial court's ruling. Sergeant Arceneaux made clear in his testimony that he informed the defendant of his rights using an "Advise of Rights" form. When the defendant had a question about one of those rights, the Sergeant invited the defendant's mother into the interviewing room and informed the defendant of his rights a second time. The defendant was asked if he understood his rights at this point, and he indicated that he did. The defendant also, in the presence of his mother, signed the rights form, indicating that he understood his rights.

Further, despite the defendant's somewhat diminished intellectual capacity, the State proved his inculpatory statement was knowingly and intelligently made. Opinions of experts on the question of waiver of constitutional rights may be helpful, but are not binding on the court. The decision on the validity of a waiver is ultimately for the court. *Ondek*, 584 So. 2d at 293. There is no controlling psychiatric principle. *Id.*; *see State v. Coleman*, 395 So. 2d 704, 706-09 (La. 1981) (our supreme court concluded the trial court was correct in finding the defendant knowingly waived his right against self-incrimination despite the fact that an expert on the Sanity Commission admitted that the defendant could understand the warnings, but questioned whether he could appreciate the serious consequences of waiving his rights); *State v. Stewart*, 93-0708 (La. App. 1 Cir. 3/11/94), 633 So. 2d

925, 931-33, *writ denied,* 94-0860 (La. 9/16/94), 642 So. 2d 189 (this court affirmed the trial court's denial of a motion to suppress the confession of the defendant who was mildly retarded with an IQ of 63). In *State v. Holmes*, 06-2988 (La. 12/2/08), 5 So. 3d 42, 72-73, *cert. denied,* __ U.S. __ (2009), our supreme court stated:

> Furthermore, despite the defendant's appellate claim that her low intelligence rendered her [waiver] of rights and subsequent statements involuntary, well established jurisprudence from this state shows otherwise. *See e.g., State v. Green*, 94-0887 (La.5/22/95), 655 So. 2d 272, 278-84 (La.1995) (mildly retarded defendant's waiver of rights was knowing and intelligent, even though psychologist testified defendant was unable to comprehend his rights; psychologist also testified defendant was educable and could be made to understand rights, police officers testified defendant understood his rights in part because of his prior criminal history); *State v. Istre*, 407 So. 2d 1183, 1186-87 (La.1981) (19-year-old who had IQ of 68 and who did not know his own age intelligently waived rights, which were explained in simplistic terms that he apparently understood); *see also State v. Brown*, 414 So. 2d 689, 696 (La.1982) ("'[M]oderate mental retardation and low intelligence or illiteracy do not of themselves vitiate the ability to knowingly and intelligently waive constitutional rights and make a free and voluntary confession.'") (citations omitted).

We find no legal error or abuse of discretion in the trial court's denial of the motion to suppress. Accordingly, this assignment of error is without merit.

ASSIGNMENT OF ERROR NO. 2

In his second assignment of error, the defendant argues the trial court erred in allowing other crimes evidence. Specifically, the defendant contends the other crimes evidence introduced at trial was not similar to the instant crime.

Prior to trial, the State filed notice of intent to introduce evidence of other crimes. At a *Prieur* hearing on the matter in 2001, Sergeant Arceneaux testified that ten-year-old A.P. gave an interview at the Hammond Advocacy Center. A.P. stated that one night when she slept at the defendant's house (because she was friends with the defendant's sister), she was awakened to the seventeen-year-old

defendant licking on her breast. A.P. also stated that while she was riding in the back of a van with the defendant, the defendant rubbed her vagina. In 2009, about two weeks prior to the defendant's trial, the trial court ruled on the admissibility of this evidence, stating in pertinent part:

> There are, I believe, four docket numbers related to sexual activity between this defendant and his brother with two victims whose ages are 8 and 10.
>
> The Court finds that additionally, the activity included the two brothers acting in concert, so the Court finds that there are sufficient similarities in the conduct, that the benefit outweighs the prejudicial value.
>
> The Court specifically looks at the language in the *Driggers* case and noted that the other crimes evidence intend [sic] to demonstrate the defendant generally took advantage of one-on-one situations with female juveniles, that he is motivated by an unnatural interest in pre-pubescent and adolescent females, and that fact gave rise to the incident charged, and it did not occur gratuitously or accidental but fully intended by the defendant. The Court found in light of the fact that both of the victims were prepubescent young girls and the defendant acted in concert with his brother, that there were sufficient similarities in the events, and I'm going to allow the evidence in.

The defendant applied for supervisory writs with this court seeking review of the trial court's ruling on the other crimes evidence. On November 13, 2009, we denied the writ, stating, "*See* La. Code Evid. art. 412.2." *See State v. Stephens*, 09-2053 (La. App. 1 Cir. 11/13/09) (unpublished). The defendant then applied for supervisory writs to our supreme court, which denied the writ. *See State v. Stephens*, 09-2463 (La. 11/17/09), 25 So. 3d 778.

At trial on the matter, A.P. testified that in 1999, when she was ten years old, she was riding to church in a van with her little sister and the defendant and his brother. The defendant and his brother rubbed under A.P.'s dress on her underwear, and they also "messed with" her breasts. A.P. further testified that she

and her sister slept at the defendant's house one night. A.P. was sleeping in the sister's room when she woke up to the defendant "suckling" on her breast.

Louisiana Code of Evidence article 404B(1) provides:

> Except as provided in Article 412, evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, of the nature of any such evidence it intends to introduce at trial for such purposes, or when it relates to conduct that constitutes an integral part of the act or transaction that is the subject of the present proceeding.

Generally, evidence of criminal offenses other than the offense being tried is inadmissible as substantive evidence because of the substantial risk of grave prejudice to the defendant. *State v. Lockett*, 99-0917 (La. App. 1 Cir. 2/18/00), 754 So. 2d 1128, 1130, *writ denied*, 00-1261 (La. 3/9/01), 786 So.2d 115. In order to avoid the unfair inference that a defendant committed a particular crime simply because he is a person of criminal character, other crimes evidence is inadmissible unless it has an independent relevancy besides simply showing a criminal disposition. *Lockett*, 754 So. 2d at 1130.

Relevant evidence is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. La. Code Evid. Ann. art. 401. All relevant evidence is admissible, except as otherwise provided by positive law. La. Code Evid. Ann. art. 402. Evidence which is not relevant is not admissible. *Id.* Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, or by considerations of undue delay or waste of time. La. Code Evid. Ann. art. 403.

Louisiana Code of Evidence article 412.2 provides:

> A. When an accused is charged with a crime involving sexually assaultive behavior, or with acts that constitute a sex offense involving a victim who was under the age of seventeen at the time of the offense, evidence of the accused's commission of another crime, wrong, or act involving sexually assaultive behavior or acts which indicate a lustful disposition toward children may be admissible and may be considered for its bearing on any matter to which it is relevant subject to the balancing test provided in Article 403.
>
> B. In a case in which the state intends to offer evidence under the provisions of this Article, the prosecution shall, upon request of the accused, provide reasonable notice in advance of trial of the nature of any such evidence it intends to introduce at trial for such purposes.
>
> C. This Article shall not be construed to limit the admission or consideration of evidence under any other rule.

Article 412.2 was a legislative response to earlier decisions from the Louisiana Supreme Court refusing to recognize a "lustful disposition" exception to the prohibition of other crimes evidence under Louisiana Code of Evidence article 404. *State v. Buckenberger*, 07-1422 (La. App. 1 Cir. 2/8/08), 984 So. 2d 751, 757, *writ denied*, 08-0877 (La. 11/21/08), 996 So.2d 1104. Ultimately, questions of relevancy and admissibility of evidence are discretion calls for the trial court. *See State v. Mosby*, 595 So. 2d 1135, 1139 (La. 1992). Such determinations regarding relevancy and admissibility should not be overturned absent a clear abuse of discretion. *Mosby*, 595 So. 2d at 1139.

The trial court did not abuse its discretion in allowing the introduction of A.P.'s testimony at trial. The other crimes evidence was relevant and its probative value was not substantially outweighed by the danger of unfair prejudice. The crimes against eight-year-old M.C. and ten-year-old A.P. clearly established the defendant's lustful disposition toward young girls. In both cases, the defendant sucked on his victim's breast and touched her vagina. Also in both cases, the defendant knew or was friendly with the victims and used that familiarity to take advantage of them.

Accordingly, this assignment of error is without merit.

ASSIGNMENT OF ERROR NO. 3

In his third assignment of error, the defendant argues that the combined effect of the improper confession and the improper other crimes evidence introduced at trial warrants a new trial.

We have addressed both of these issues in the first and second assignments of error. Moreover, we have found no error by the trial court in allowing the confession or the other crimes testimony into evidence.

Accordingly, this assignment of error is without merit.

ASSIGNMENT OF ERROR NO. 4

In his fourth assignment of error, the defendant argues his sentence is excessive.

The Eighth Amendment to the United States Constitution and Article I, section 20, of the Louisiana Constitution prohibit the imposition of excessive or cruel punishment. Although a sentence falls within statutory limits, it may be excessive. *State v. Sepulvado*, 367 So. 2d 762, 767 (La. 1979). A sentence is considered constitutionally excessive if it is grossly disproportionate to the seriousness of the offense or is nothing more than a purposeless and needless infliction of pain and suffering. *State v. Andrews*, 94-0842 (La. App. 1 Cir. 5/5/95), 655 So. 2d 448, 454. A sentence is considered grossly disproportionate if, when the crime and punishment are considered in light of the harm done to society, it shocks the sense of justice. *Andrews*, 655 So. 2d at 454. The trial court has great discretion in imposing a sentence within the statutory limits, and such a sentence will not be set aside as excessive in the absence of a manifest abuse of discretion. *See State v. Holts*, 525 So. 2d 1241, 1245 (La. App. 1st Cir. 1988). Louisiana Code of Criminal Procedure article 894.1 sets forth the factors for the

trial court to consider when imposing a sentence. While the entire checklist of Article 894.1 need not be recited, the record must reflect the trial court adequately considered the criteria. *State v. Brown*, 02-2231 (La. App. 1 Cir. 5/9/03), 849 So. 2d 566, 569.

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

In the instant matter, the defendant faced a maximum sentence of fifty years and was sentenced to forty-five years imprisonment at hard labor. *See* La. Rev. Stat. Ann. §§ 14:27D(1)(a)[1] & 14:42D(1). The defendant argues in his brief that he is a first-time offender, he remained at-large for a significant part of this proceeding and was not implicated in other criminal proceedings, he was a young man at the time of the crime, and he lacks a normal intellectual capacity. It is clear in its reasons for the sentence that the trial court thoroughly considered Article 894.1 in arriving at an appropriate sentence for the defendant:

At sentencing, the trial court stated in pertinent part:

> The Court has received correspondence from both the victim's family, as well as Mr. Stephens' family and other members of the community, and I just wanted everyone to know that I did receive and take into consideration that information.

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[1] At the time of the offense, the relevant provision was Louisiana Revised Statutes section 14:27D(1).

This is a case of a 27-year-old male, who is officially classified as a first time felony offender. The defendant was arrested on May 4th, 2000 and charged with Indecent Behavior With a Juvenile. On July 10th, 2000, he was indicted by a grand jury on Aggravated Rape. On December 17th, 2002, the defendant failed to appear for court and a bench warrant was issued. He was arrested on that warrant six years later, on April 21st, 2008. On November 18th, 2009, the defendant was found guilty of Attempted Aggravated Rape by a jury of his peers. Sentencing was deferred, and a "Presentence Investigation Report" was ordered. The report has been made available to the defendant and his counsel and is filed herein and made a part hereof by reference and is ordered sealed.

The offense for which the defendant was found guilty occurred on March 25th, 2000 in Ascension Parish when the defendant at age 17 attempted sexual intercourse with the victim, who was eight years old. As stated before, this is the one felony offense for which the defendant has been found guilty. He has, however, been charged in another matter with Indecent Behavior With a Juvenile.

The social history aspect of the Presentence Investigation reveals that the defendant was born in Florida in 1982 to Johnny and Sheila Stephens. He has two brothers and one sister. He has never been married.

The felony to which this defendant was found guilty, specifically Attempted Aggravated Rape, provides for imprisonment at hard labor for not less than 10 years, nor more than 50 years, without benefit of parole, probation, or suspension of sentence. The "Presentence Investigation Report" recommends that the defendant be committed to the Department of Corrections for 50 years at hard labor. The Court has decided to incarcerate this defendant and will state its reasons therefor as mandated by Article 894.1 of the Code of Criminal Procedure.

The Court believes that there is an undue risk that during the period of a suspended sentence or probation this defendant would commit another crime, that he is in need of correctional treatment or a custodial environment that can be provided most effectively by his commitment to an institution, and that a lesser sentence than the one to be imposed herein would deprecate the seriousness of the defendant's crime.

The offender knew or should have known that the victim in this offense was particularly vulnerable. She was only eight years old. The actions for which the defendant was found guilty are particularly reprehensible. This victim will likely have to undergo therapy to deal with this trauma inflicted upon her.

The defendant was found guilty on one count of Attempted Aggravated Rape. He has refused to accept any responsibility for the damage done in this case. His interview in the Presentence Investigation actually places blame on this very young child for the events of March 25th, 2000.

Considering the trial court's careful review of the circumstances, the defendant's history, and the nature of the crime, we find no abuse of discretion by the trial court. The trial court provided ample justification in imposing a forty-five year sentence on the defendant for the attempted aggravated rape of M.C., whom the defendant knew or should have known was particularly vulnerable because of her youth. Accordingly, the sentence imposed by the trial court is not grossly disproportionate to the severity of the offense and, therefore, is not unconstitutionally excessive.

This assignment of error is without merit.

CONCLUSION

For the foregoing reasons, the conviction and sentence of defendant, John Ryan Stephens, for attempted aggravated rape are affirmed.

CONVICTION AND SENTENCE AFFIRMED.