NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2007 KA 0634

STATE OF LOUISIANA

VERSUS

MICHAEL F. JOHNSON

Judgment Rendered: September 19, 2007

* * * * * * * *

Appealed from the
21st Judicial District Court
In and for the Parish of Livingston, Louisiana
Case No. 17624

The Honorable Elizabeth P. Wolfe, Judge Presiding

* * * * * * * *

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Michael F. Johnson

* * * * * * * *

BEFORE: GAIDRY, MCDONALD, AND MCCLENDON, JJ.

McClendon, J. dissents in part and Affirms in part and

GAIDRY, J.

The defendant, Michael F. Johnson, was charged by bill of information with knowingly and intentionally possessing four hundred grams or more of cocaine, a violation of La. R.S. 40:967(F)(1)(c). He pled not guilty. The defendant filed a motion to suppress statements made to the police. Following a hearing on the matter, the motion was denied. Following a jury trial, the defendant was found guilty as charged. The defendant was sentenced to thirty years imprisonment at hard labor without benefit of probation, parole, or suspension of sentence. The defendant now appeals, designating three assignments of error.

We affirm the conviction, amend the sentence, and affirm the sentence as amended.

FACTS

On March 6, 2003, about a dozen Sheriff's deputies from the Livingston Parish Sheriff's Office executed a search warrant for narcotics at a mobile home on Selders Road, a small, dead-end street in Livingston Parish. During the search, two male individuals arrived together at the mobile home in a vehicle. The vehicle was searched and, upon drugs being found in the vehicle, the two individuals were arrested. One of these individuals, who resided at the mobile home, volunteered to contact the defendant and place an order for cocaine from him. The defendant did not live at the mobile home, nor was he a target of the search warrant.

Upon calling the defendant from a phone inside the mobile home, the caller informed the police that the defendant was a black male who would be driving a blue four-wheel drive pickup truck. About forty-five minutes later at around 9:00 p.m., the defendant came down Selders Road in a pickup truck as described by the caller. Some deputies were positioned outside, but

out of sight, to establish a perimeter around the mobile home. The defendant slowly drove past the mobile home. He did not stop, but continued to the cul-de-sac at the end of the street. When he arrived at the dead-end, he backed his truck up, turned around, went back to the mobile home, parked and exited his vehicle.

As the defendant walked toward the mobile home, Detective Victor Marler approached him, obtained his name, and then identified himself. Detective Marler explained to the defendant why the deputies were there. Detective Marler *Mirandized* the defendant, but did not arrest him. He asked the defendant if he could search his vehicle, and the defendant consented to the search. The vehicle was searched, but no contraband was found.

During the time the defendant's vehicle was being searched, Detective Stan Carpenter walked to the end of the street where the defendant had turned his vehicle around. Deputy Charlie Roberts, who was outside the entire time near the end of the street and maintained constant visual contact with the vehicle, showed Detective Carpenter where the defendant had turned around. There was a heavy downpour shortly before the defendant drove down Selders Road. The officers saw tire tracks in the grass where the defendant had turned around. No other vehicle had gone to the end of that road since the rain had stopped. Detective Carpenter shone his flashlight around that area and found two clear Ziploc bags of cocaine on the ground next to the tracks. The bags were dry and contained both powdered and crack cocaine with a net weight of 532.34 grams. The defendant was arrested and brought to Livingston Parish Prison. During the booking process, the defendant told Detective Ben Bourgeois that the drugs were the defendant's. The defendant refused to put his statement in writing.

ASSIGNMENT OF ERROR NO. 1

In his first assignment of error, the defendant argues that his constitutional right to confrontation was violated. Specifically, the defendant makes the following four contentions: the name of the person who called the defendant should have been provided to the defense because he was not a confidential informant; pursuant to *Crawford v. Washington*, 541 U.S. 36, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004), the caller's statements should have been suppressed since the defendant could not cross-examine him; under Louisiana law, the caller's statements were inadmissible hearsay; and, the violation was not harmless error since it contributed to the verdict.

The defendant's first contention is that the caller was not a confidential informant because he had never been used before as a source of information. Therefore, the officers had no information regarding his truthfulness or reliability. As such, the State should have been required to reveal the identity of the caller.[1]

As discussed below, we find the caller was a confidential informant. The confidential informant lived at the mobile home that was the subject of the search warrant. He was arrested when he got home. Shortly after his arrest, with no use of force or promises of immunity by the police, the confidential informant volunteered to call the defendant and place an order for drugs. It appears the confidential informant was familiar with the defendant because he knew his phone number, and he spoke to the defendant

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[1] The record contains no motion to reveal the identity of the confidential informant. The issue regarding the identity of the confidential informant was raised on the first day of trial in an oral motion to continue. Despite open-file discovery, defense counsel argued that several questions regarding the confidential informant's identity in his motion for a bill of particulars had not been answered. Following argument, the trial court, in denying the motion to continue, ruled that the caller was a confidential informant and that the State was not required to disclose his identity.

in "code words" when he ordered the drugs.[2] Further, the confidential informant provided the officers with the defendant's name, race, and the type of vehicle he would be driving. When the defendant arrived, his race and the description of his vehicle matched the confidential informant's description. When Detective Marler approached the defendant, the defendant identified himself as Mr. Johnson. Thus, within moments of officers making initial contact with the defendant, everything the confidential informant told them was confirmed as true. We do not find it significant that this was the first time officers had used this caller as a confidential informant. As the trial court stated in denying the defendant's motion to continue, "As far as the confidential informant being the first time, you've got to start some time." See *State v. Lumpkin*, 2001-1721 (La. App. 1st Cir. 3/28/02), 813 So.2d 640, writ denied, 2002-1124 (La. 9/26/03), 854 So.2d 342; see also *Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983), where the Supreme Court found there was probable cause for the issuance of search warrants based in part on the information of an anonymous informant.[3]

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[2] When Detective Marler was asked on direct examination if the confidential informant called the defendant by his name when he was on the phone with him, Detective Marler responded, "Uh, I forgot what he said, what he called him because there was a lot of code work, code words and so forth going on."

[3] In *Lumpkin*, 2001-1721 at pp. 9-10, 813 So.2d at 649, the confidential informant was known, but the information provided was his or her first report. This Court found that the information provided by the confidential informant, as corroborated, justified an investigative stop, and that when officers confirmed the defendant's identity, they had probable cause to arrest him and search the vehicle. We note in the instant matter that, while the confidential informant's information was ostensibly reliable enough to establish probable cause to arrest the defendant or search his vehicle, neither the defendant's arrest nor the search of his vehicle was based solely on the information provided by the confidential informant. The search of his vehicle was predicated on the defendant's consent; and the arrest of the defendant was predicated on the discovery of drugs on the ground where defendant had just driven. In other words, probable cause to arrest the defendant arose from the discovery of the drugs, not from the confidential informant's information.

Accordingly, we find that the person who voluntarily called the defendant to initiate a drug transaction was a confidential informant. We further find that the trial court did not err in finding that the State was not required to disclose the identity of this confidential informant. As a general rule, the State is not required to divulge the name of a confidential informant to the accused. However, an exception is made when the confidential informant was a participant in an illegal drug transaction. *State v. Buffington*, 452 So.2d 1313 (La. App. 1st Cir. 1984).[4]

The drugs forming the basis for the charge brought against the defendant were obtained, not from a controlled drug buy between the confidential informant and the defendant, but rather from them being seized from the ground as a result of being discarded by the defendant. The confidential informant made a phone call to the defendant to set up a drug buy that never occurred. Accordingly, since the confidential informant's initial contact with the defendant did not constitute a completed drug transaction, the participant exception is inapplicable, and the State was not required to divulge the name of the confidential informant.

The defendant's second and third contentions are that the confidential informant's statements should have been suppressed under *Crawford* and constituted impermissible hearsay under Louisiana law. Initially, we note that the defendant makes no record references in his brief to any particular testimony that may be the source of his complaint. The defendant asserts only that "statements" made by the caller should have been suppressed. That notwithstanding, our review of the entire record of every witness who testified at trial as to what the confidential informant said reveals that the

[4] During his oral motion to continue, the defendant suggested that, because the confidential informant initiated the phone call to the defendant, he was a participant in the drug transaction.

defendant, on hearsay grounds, objected only four times during the testimony of Detective Bourgeois. The trial court sustained all four of these objections made by the defendant.[5] The defendant did not ask for an admonishment or mistrial at any time. When the trial court sustains an objection and defense counsel fails to request an admonition or a mistrial, the defendant cannot later raise the issue on appeal. See *State v. Legendre*, 2005-1469, p. 5 n.1 (La. App. 4th Cir. 9/27/06), 942 So.2d 45, 49; and *State v. Akins*, 96-414, p. 19 (La. App. 3d Cir. 12/11/96), 687 So.2d 489, 499. As to all other witness testimony at trial regarding what the confidential informant said, the defendant failed to lodge any contemporaneous objections on either the grounds of a *Crawford* confrontation violation or inadmissible hearsay. As such, the defendant has waived his right to raise these issues on appeal. La. Code Evid. art. 103(A)(1); La. Code Crim. P. art. 841(A). See *State v. Young*, 99-1264, p. 9 (La. App. 1st Cir. 3/31/00), 764

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[5] The defendant objected on hearsay grounds only. He made no objections regarding any *Crawford* confrontation violation. Following is that portion of the trial transcript containing the defendant's sustained hearsay objections during the direct examination of Detective Bourgeois:

> Q. Okay. And what did he do during that phone call?
> A. He placed an order for cocaine, and Mr. Johnson advised he would be in [sic] route.
> By Mr. Davis [defense counsel]: Objection, Your Honor.
> * * * * *
> The Court: Objection will be sustained.
> Q. What did the person making the telephone call do?
> A. He ordered up cocaine from Mr. Johnson.
> Q. Now, . . . when he got off what did he tell you? . . . What was going to happen?
> A. He said that Mr. Johnson was going --
> By Mr. Davis: Objection, Your Honor.
> The Court: Basis?
> By Mr. Davis: Hearsay.
> The Court: Sustained.
> Q. The person, what did he say that the person on the telephone was going to do?
> A. He was going to bring the --
> By Mr. Davis: Objection, Your Honor. Hearsay.
> The Court: Sustained. Rephrase.
> Q. What did you hear that person on the phone say?
> By Mr. Davis: Same objection, Your Honor.
> The Court: Sustained. . . .

So.2d 998, 1005. See also *State v. Runyon*, 2005-36, p. 21 (La. App. 3d Cir. 11/2/05), 916 So.2d 407, 422-423, writs denied, 2006-1348 (La. 9/1/06), 936 So.2d 207 & 2006-0667 (La. 11/17/06), 942 So.2d 526.

The defendant's fourth contention is that, whether the issue is a confrontation clause violation or a hearsay violation, the violation was not harmless error since it contributed to the verdict. As discussed above, the *Crawford* and hearsay issues are not before us. Accordingly, the harmless error issue is moot.

This assignment of error is without merit.

ASSIGNMENT OF ERROR NO. 2

In his second assignment of error, the defendant argues that his right against self-incrimination was violated. Specifically, the defendant contends that the State failed to demonstrate that the defendant, following being *Mirandized*, agreed to waive his rights prior to making inculpatory statements to Detective Bourgeois.

Trial courts are vested with great discretion when ruling on a motion to suppress. Consequently, the ruling of a trial judge on a motion to suppress will not be disturbed absent an abuse of that discretion.[6] *State v. Long*, 2003-2592, p. 5 (La. 9/9/04), 884 So.2d 1176, 1179, cert. denied, 544 U.S. 977, 125 S.Ct. 1860, 161 L.Ed.2d 728 (2005). In denying the motion to suppress, the trial court did not find there was "anything sufficient to suppress the evidence."

[6] In determining whether the ruling on the 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).

The defendant was *Mirandized* by Detective Marler prior to the drugs being discovered on the ground. Following his arrest, the defendant was brought to jail and booked. According to the testimony of Detective Bourgeois at the motion to suppress and the trial, during the booking process, he asked the defendant if he fully understood the *Miranda* warnings given to him by Detective Marler. The defendant responded in the affirmative. Detective Bourgeois asked the defendant if he wanted to cooperate by giving the name of his supplier or anyone else involved with the narcotics. The defendant responded that he was the only one involved and that the drugs were his. Also, he could not divulge the name of his supplier because he would be killed. Deputy Brandon Ashford, who testified at the motion to suppress and the trial, was also present during the booking process when the defendant made these statements to Detective Bourgeois. According to Deputy Ashford, Detective Bourgeois asked the defendant if he had been *Mirandized* and fully understood his warnings. The defendant responded that he did. When asked by Detective Bourgeois if he had any information where the narcotics came from, the defendant did not wish to give any information because his life would be in danger. The defendant told Detective Bourgeois that he accepted full responsibility for the narcotics found at the scene.

It is the defendant's contention that, while he indicated he understood his rights, there is no evidence that he agreed to waive those rights. We do not agree. We find that the defendant waived his rights when he acknowledged that he understood his rights, and then, in response to Detective Bourgeois's question, told him that the drugs found at the scene were the defendant's.

Before a confession may be introduced into evidence, the State must establish that the accused was advised of his constitutional rights under Article I, § 13 of the Louisiana Constitution and the Supreme Court's decision in *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). In *State v. Brown*, 384 So.2d 425, 426-427 (La. 1980), the Louisiana Supreme Court stated:

> When a statement made during custodial interrogation is sought to be introduced into evidence the state bears a heavy burden to show that the defendant knowingly and intelligently waived his right against self-incrimination and the right to counsel. *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). In *North Carolina v. Butler*, 441 U.S. 369, 99 S.Ct. 1755, 60 L.Ed.2d 286 (1979), the United States Supreme Court reiterated that the state's burden is great and that the courts must presume that a defendant did not waive his rights. However, in *Butler* the Court also held that the waiver of *Miranda* rights need not be explicit but may be inferred from the circumstances surrounding the statement – the words and actions of the person interrogated:
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> "An express written or oral statement of waiver of the right to remain silent or of the right to counsel is usually strong proof of the validity of that waiver, but is not inevitably either necessary or sufficient to establish waiver. The question is not one of form, but rather whether the defendant in fact knowingly and voluntarily waived the rights delineated in the *Miranda* case. As was unequivocally said in *Miranda*, mere silence is not enough. That does not mean that the defendant's silence, coupled with an understanding of his rights and a course of conduct indicating waiver, may never support a conclusion that a defendant has waived his rights. The courts must presume that a defendant did not waive his rights; the prosecution's burden is great; but in at least some cases waiver can be clearly inferred from the actions and words of the person interrogated." 99 S.Ct. at 1757.

In *Moran v. Burbine*, 475 U.S. 412, 421, 106 S.Ct. 1135, 1140-1141, 89 L.Ed.2d 410 (1986), the United States Supreme Court stated:

> *Miranda* holds that "[t]he defendant may waive effectuation" of the rights conveyed in the warnings "provided the waiver is made voluntarily, knowingly and intelligently." The inquiry has two distinct dimensions. First, the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a

> full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the "totality of the circumstances surrounding the interrogation" reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived. (citations omitted).

In the instant matter, Detective Marler testified at trial that he advised the defendant of his rights, and that he understood his rights.[7] During the booking process, when Detective Bourgeois asked the defendant if he fully understood the *Miranda* warnings given to him by Detective Marler, the defendant responded, "Yes." Upon being asked by Detective Bourgeois if he wished to cooperate, the defendant stated that the drugs were his. The response by the defendant regarding who the drugs belonged to was immediate and without reluctance. There was no indication that the defendant wanted an attorney or wished to remain silent. There is no evidence in the record to suggest that the defendant was intimidated, coerced or deceived in any way which would have led him to waive his right to remain silent for any reason other than as a function of his free will. See *State v. Robertson*, 97-0177, p. 26 (La. 3/4/98), 712 So.2d 8, 30, cert. denied, 525 U.S. 882, 119 S.Ct. 190, 142 L.Ed.2d 155 (1998).

Under these circumstances, we find that at the time he made these statements to Detective Bourgeois, the defendant had been adequately informed of his rights, understood those rights, and his waiver of those rights could be clearly inferred from his actions and words. See *Brown*, 384 So.2d at 427-28. Accordingly, we find no abuse of discretion by the trial court in denying the defendant's motion to suppress.

This assignment of error is without merit.

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[7] Detective Bourgeois was also present when Detective Marler advised the defendant of his rights.

ASSIGNMENT OF ERROR NO. 3

In his third assignment of error, the defendant argues the evidence was not sufficient to support his conviction. Specifically, the defendant contends that there was no physical evidence linking him to the drugs, and there was no evidence to establish that he had actual or constructive possession of the two bags of cocaine.

A conviction based on insufficient evidence cannot stand as it violates Due Process. See U.S. Const. amend. XIV; La. Const. art. I, § 2. The standard of review for the sufficiency of the evidence to uphold a conviction is whether or not, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could conclude that the State proved the essential elements of the crime beyond a reasonable doubt. See La. Code Crim. P. art. 821(B). The *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979) standard of review, incorporated in Article 821, is an objective standard for testing the overall evidence, both direct and circumstantial, for reasonable doubt. When analyzing circumstantial evidence, La. R.S. 15:438 provides that the factfinder must be satisfied the overall evidence excludes every reasonable hypothesis of innocence. See *State v. Patorno*, 2001-2585, pp. 4-5 (La. App. 1st Cir. 6/21/02), 822 So.2d 141, 144.

The trier of fact is free to accept or reject, in whole or in part, the testimony of any witness. Moreover, when there is conflicting testimony about factual matters, the resolution of which depends upon a determination of the credibility of the witnesses, the matter is one of the weight of the evidence, not its sufficiency. The trier of fact's determination of the weight to be given evidence is not subject to appellate review. An appellate court will not reweigh the evidence to overturn a factfinder's determination of guilt.

State v. Taylor, 97-2261, pp. 5-6 (La. App. 1st Cir. 9/25/98), 721 So.2d 929, 932.

To support a conviction of possession of a controlled dangerous substance, the State must prove that the defendant was in possession of the illegal drug and that he knowingly or intentionally possessed the drug. Guilty knowledge therefore is an essential element of the crime of possession. A determination of whether or not there is "possession" sufficient to convict depends on the particular facts of each case. To be guilty of the crime of possession of a controlled dangerous substance, one need not physically possess the substance; constructive possession is sufficient. In order to establish constructive possession of the substance, the State must prove that the defendant had dominion and control over the contraband. A variety of factors are considered in determining whether or not a defendant exercised "dominion and control" over a drug, including: a defendant's knowledge that illegal drugs are in the area; the defendant's relationship with any person found to be in actual possession of the substance; the defendant's access to the area where the drugs were found; evidence of recent drug use by the defendant; the defendant's physical proximity to the drugs; and any evidence that the particular area was frequented by drug users. *State v. Harris*, 94-0696, pp. 3-4 (La. App. 1st Cir. 6/23/95), 657 So.2d 1072, 1074-1075, writ denied, 95-2046 (La. 11/13/95), 662 So.2d 477.

In this case, the jury was presented with two theories of who possessed the cocaine found by Detective Carpenter: the theory that the defendant constructively possessed the cocaine that was found on the ground only moments after he had actual possession of the cocaine, and the

defendant's theory that the cocaine belonged to someone else.[8] The jurors obviously concluded that the version of the events suggested by the defense was a fabrication designed to deflect blame from the defendant. When a case involves circumstantial evidence and the jury reasonably rejects the hypothesis of innocence presented by the defense, that hypothesis falls, and the defendant is guilty unless there is another hypothesis, which raises a reasonable doubt. *State v. Moten*, 510 So.2d 55, 61 (La. App. 1st Cir.), writ denied, 514 So.2d 126 (La. 1987).

The jury's verdict reflected the reasonable conclusion that the defendant, having just left the area where the cocaine was found, constructively possessed the cocaine. Through physical evidence and testimony, the State established that the cocaine was seized in the cul-de-sac area where the defendant had, moments before, driven his vehicle. The ground was still wet from heavy rain that had stopped just prior to the defendant driving down the block. When the defendant turned around in the cul-de-sac, his vehicle made tire marks on the wet ground. The two bags of cocaine were found a few feet from these tire marks. Further, the bags were not wet, which suggested they were very recently thrown on the ground given the recent downpour. The defendant did not testify and presented no rebuttal testimony. See *Moten*, 510 So.2d at 61-62. Moreover, the State established through testimony that the defendant admitted the drugs were

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[8] The defendant did not testify, and no witnesses for the defense testified. The defendant's theory is gleaned from his motion for a "directed verdict" after the State rested its case. The defendant argued that there was no testimony that he actually handled the cocaine that was seized. Also no fingerprints were found on the bags of cocaine. The defendant further suggested that the caller (confidential informant) who identified the defendant could have known that the defendant came through that neighborhood every evening at the same time. The "directed verdict" was denied. The defendant made similar assertions in his closing argument.

his. Thus, the defendant's confession, alone, established actual possession of the drugs.

After a thorough review of the record, we find that the evidence supports the jury's verdict. We are convinced that viewing the evidence in the light most favorable to the State, any rational trier of fact could have found beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, that the defendant was guilty of possession of four hundred grams or more of cocaine.

This assignment of error is without merit.

SUPPLEMENTAL ASSIGNMENT OF ERROR

In this supplemental assignment of error, the defendant argues that the sentence imposed is excessive.

Louisiana Code of Criminal Procedure article 881.1 provides in pertinent part:

> A. (1) In felony cases, within thirty days following the imposition of sentence or within such longer period as the trial court may set at sentence, the state or the defendant may make or file a motion to reconsider sentence.
>
> * * * * *
>
> B. The motion shall be oral at the time of sentence or shall be in writing thereafter and shall set forth the specific grounds on which the motion is based.
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> * * * * *
>
> E. Failure to make or file a motion to reconsider sentence or to include a specific ground upon which a motion to reconsider sentence may be based, including a claim of excessiveness, shall preclude the state or the defendant from raising an objection to the sentence or from urging any ground not raised in the motion on appeal or review.

The defendant was sentenced on May 25, 2006. He filed a motion for an appeal on June 12, 2006. The trial court granted the defendant's motion for an appeal, and an order of appeal was entered on June 19, 2006. The defendant filed a pro se motion to reconsider sentence on November 20,

2006.[9]

Since the defendant filed his motion to reconsider sentence more than thirty days following the imposition of sentence, the trial court did not set a longer period of time for filing the motion at sentencing, and an order of appeal had been entered, the trial court no longer had jurisdiction in the case.[10] Furthermore, since the defendant did not comply with the time requirements of Article 881.1(A)(1), he is barred procedurally from having this assignment of error reviewed on appeal.[11] La. Code Crim. P. art. 916(3); see *State v. Clark*, 93-0714 (La. App. 1st Cir. 4/8/94), 635 So.2d 703, 705-06.

This assignment of error is without merit.

REVIEW FOR ERROR

The defendant asks that this Court examine the record for error under La. Code Crim. P. art. 920(2). This Court routinely reviews the record for such errors, whether or not such a request is made by a defendant. Under La. Code Crim. P. art. 920(2), we are limited in our review to errors discoverable by a mere inspection of the pleadings and proceedings without inspection of the evidence. After a careful review of the record in these proceedings, we have found sentencing error. See *State v. Price*, 2005-2514

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[9] The defendant's pro se brief is styled, "Motion to Correct an Illegal Sentence," but the substance of the motion clearly indicates that the defendant is attacking the sentence as being excessive.

[10] The trial court set the hearing date for the defendant's motion on January 22, 2007. The defendant made no appearance at the hearing and, on motion of the State, the trial court ordered the matter removed from the docket. The defendant's failure to appear at the hearing notwithstanding, the trial court was without jurisdiction to rule on motion.

[11] At the conclusion of the sentencing, defense counsel stated, "Your honor just for the record I would object to the sentence and I believe the first fifteen was without benefit." Defense counsel's objection did not constitute an oral motion to reconsider sentence on the basis of overall excessiveness. Moreover, a general objection to a sentence without stating specific grounds, including excessiveness, preserves nothing for appellate review. See *State v. Bickham*, 98-1839, p. 6 (La. App. 1st Cir. 6/25/99), 739 So.2d 887, 891.

(La. App. 1st Cir. 12/28/06), 952 So.2d 112 (en banc) (petition for cert. filed at La. Supreme Court on 1/24/07, 2007-K-130).

The minutes reflect the defendant was sentenced to thirty years at hard labor without the benefit of probation, parole, or suspension of sentence. Under La. R.S. 40:967(F)(1)(c), a person shall be sentenced to serve a term of imprisonment at hard labor of not less than fifteen years, nor more than thirty years and to pay a fine of not less than two hundred fifty thousand dollars, nor more than six hundred thousand dollars. Thus, the denial of parole eligibility on the defendant's entire sentence is unlawful. Accordingly, we amend the defendant's sentence to delete that portion providing that all of the sentence be served without benefit of probation, parole, or suspension of sentence. Under La. R.S. 40:967(G), the defendant is eligible for parole in fifteen years, which is the minimum sentence provided under Subsection (F). Therefore, we amend the defendant's sentence to thirty years at hard labor, with the first fifteen years to be served without benefit of parole. Resentencing is not required. Because the trial court sentenced the defendant to the maximum possible period of imprisonment, it is not necessary for us to remand for resentencing after amending the parole prohibition. However, we remand the case and order the district court to amend the minute entry of the sentencing accordingly and, if necessary, the commitment order. See *State v. Benedict*, 607 So.2d 817, 823 (La. App. 1st Cir. 1992). See also *State v. Miller*, 96-2040, p. 3 (La. App. 1st Cir. 11/7/97), 703 So.2d 698, 700-701, writ denied, 98-0039 (La. 5/15/98), 719 So.2d 459.

Also, under La. R.S. 40:967(F)(1)(c), a fine of not less than two hundred fifty thousand dollars nor more than six hundred thousand dollars is mandatory. However, since the defendant is not inherently prejudiced by the

trial court's failure to impose a fine, we decline to correct the illegally lenient sentence. See *Price*, 2005-2514 at p. 22, 952 So.2d at 124-125.

CONVICTION AFFIRMED, SENTENCE AMENDED AND AFFIRMED AS AMENDED, AND REMANDED WITH ORDER.

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

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STATE OF LOUISIANA

VERSUS

MICHAEL F. JOHNSON

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McCLENDON, J., dissents in part, affirms in part, and assigns reasons.

I agree that this record reveals sentencing error. Further, with regard to errors that do not inherently prejudice the defendant, we may, under **Price**, decline to correct the illegally lenient sentence.

However, in this particular case, I do not believe the failure to impose the sentence mandated by the legislature should be ignored. The severity of the fine contained in LSA-R.S. 14:967(F)(1)(c), with a range of $250,000.00 to $600,000.00, clearly reflects that the legislature considered the fine an integral part of the sanction; a deterrent as important as the length of confinement. Thus, I would remand for resentencing. For these reasons, I dissent from the majority's failure to remand in order to allow the correction by the trial court of this illegally lenient sentence.