NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA	*	**NO. 2000-KA-1940**
VERSUS	*	**COURT OF APPEAL**
LEROY J. FIELDS	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 411-743, SECTION "B"
Honorable Patrick G. Quinlan, Judge

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Judge David S. Gorbaty

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(Court composed of Judge Miriam G. Waltzer, Judge Terri F. Love, Judge David S. Gorbaty)

Harry F. Connick
District Attorney
Nicole Brasseaux Barron
Assistant District Attorney
619 South White Street
New Orleans, LA 70119
COUNSEL FOR PLAINTIFF/APPELLEE

Holli Herrle-Castillo
LOUISIANA APPELLATE PROJECT

P.O. Box 2333
Marrero, LA 70073
COUNSEL FOR DEFENDANT/APPELLANT

AFFIRMED

Defendant Leroy J. Fields appeals his conviction for possession of a stolen vehicle valued over five hundred dollars, claiming that there was insufficient evidence to sustain the conviction. He also appeals his life sentence, claiming that he was wrongly adjudicated a third felony offender, and that the sentence was excessive. For the following reasons, we affirm.

STATEMENT OF CASE:

Leroy J. Fields was found guilty as charged after a jury trial on April 6, 2000. The State filed a multiple bill of information, to which Mr. Fields pled not guilty. The State subsequently amended the multiple bill of information. After a hearing, Mr. Fields was adjudicated a third felony offender, and was sentenced to life imprisonment at hard labor without benefit of probation, parole or suspension of sentence. The trial court denied a motion to reconsider sentence.

STATEMENT OF FACTS:

At approximately 12:00 a.m. on October 12, 1999, New Orleans Police Officer Chad Perez was on patrol driving on Monroe Street towards

Jeanette Street when he observed a green Dodge Intrepid pass the intersection traveling at a high rate of speed. The officer followed the vehicle and saw the driver turn right on Green Street and again on Eagle Street without using turn signals. The officer stopped the vehicle in the 8700 block of Green Street, and the driver, Mr. Fields, stepped out of the vehicle. The officer approached him and asked for his driver's license. Mr. Fields informed the officer that he did not have a driver's license. The officer arrested the defendant, handcuffed him, and placed him in the back seat of the police vehicle. Officer Perez walked to the Intrepid and attempted to turn the ignition off, but the key would not turn. Upon inspection, the officer noted that the ignition switch had been defeated. Officer Perez then ran the vehicle's license number through the NCIC computer and learned that the vehicle had been reported stolen. The officer then arrested Mr. Field's for possession of stolen property and advised him of his rights. Officer Perez contacted the crime lab and the owner of the vehicle. A crime lab technician went out to the scene and photographed the vehicle before the vehicle was towed to the auto pound. The owner of the vehicle, Bridgette LaFrance, also went out to the scene and identified the vehicle.

Bridgette LaFrance testified that she owned a green Dodge Intrepid in

1999. She reported the vehicle stolen on October 6, 1999. At approximately 2:00 a.m. on October 12, 1999, Ms. LaFrance received a phone call that her vehicle had been found. When she arrived on the scene, she observed that her vehicle had been demolished. There were dents in the doors, and the steering column had been defeated. She did not know Mr. Fields and did not give him permission to use or enter her vehicle.

DISCUSSION:

ASSIGNMENT OF ERROR NO. 1:

In his first assignment, Mr. Fields argues that the trial court erred when it adjudicated him a third felony offender. The defendant contends that the State did not produce sufficient evidence to prove that his guilty plea to a prior conviction for possession of cocaine was knowingly and voluntarily made.

In *State v. Shelton*, 621 So.2d 769 (La. 1993), the Louisiana Supreme Court reviewed the jurisprudence concerning the burden of proof in habitual offender proceedings and found it proper to assign a burden of proof to a defendant who contests the validity of his guilty plea. In *State v. Winfrey*,

97-427 (La.App. 5 Cir 10/28/97), 703 So.2d 63, 80, *citing State v. Conrad,* 94-232 (La.App. 5 Cir. 11/16/94), 646 So.2d 1062, the Fifth Circuit set out the procedure for determining the burden of proof in a multiple offender hearing:

> If the defendant denies the multiple offender allegations then the burden is on the State to prove (1) the existence of a prior guilty plea, and (2) that defendant was represented by counsel when the plea was taken. Once the State proves those two things, the burden then shifts to the defendant to produce affirmative evidence showing (1) an infringement of his rights, or (2) a procedural irregularity in the taking of the plea. Only if the defendant meets that burden of proof does the burden shift back to the State to prove the constitutionality of the guilty plea. In doing so, the State must produce either a "perfect" transcript of the *Boykin* colloquy between the defendant and the judge or any combination of (1) a guilty plea form, (2) a minute entry, or (3) an "imperfect" transcript. If anything less than a "perfect" transcript is presented, the trial court must weigh the evidence submitted by the defendant and the State to determine whether the State met its burden of proof that defendant's prior guilty plea was informed and voluntary.

Prior to *State v. Shelton, supra,* the requirement for proof of *Boykinization* was a transcript of the plea of guilty or a minute entry showing an articulated waiver of the three rights. In *State v. Bland*, 419 So.2d 1227,1232 (La. 1982), the minute entry alone was sufficient to show that the defendant was informed of his rights where the minute entry

itemized those rights. In a footnote in the *Shelton* opinion, the Supreme Court noted that:

> . . . [R]etention of the three-right articulation rule is not at issue in this case. The plea of guilty form specifically articulates the three *Boykin* rights. Thus, although we must herein determine whether the form plus the general minute entry are sufficient to meet the state's burden of proof, we need not today decide whether the state's burden, if any, should continue to include proof that the three rights were articulately waived.

State v. Shelton, 621 So.2d at 776, fn. 17.

In the present case, the State produced certified documents indicating that Mr. Fields was represented by counsel when he pled guilty to possession of cocaine on May 18, 1993. The waiver of rights/plea of guilty form was initialed and signed by the defendant, and signed by his attorney and the trial judge. The waiver of rights form sets out the rights which Mr. Fields waived by pleading guilty. The minute entry of May 18, 1993, states that he pled guilty to possession of cocaine pursuant to *Alford*. The entry also indicates that the trial court advised the defendant of his rights prior to accepting the guilty plea.

Mr. Fields contends that the plea is defective because he wrote "Alfred" instead of his initials on the plea form next to the statement that provides "I am entering a plea of guilty to this crime because I am, in fact,

guilty of this crime." It is apparent that he was indicating that he was not admitting his guilt but was pleading guilty under *Alford*. The writing of "Alfred" instead of his initials does not make the plea defective. Mr. Fields initialed all the other statements and rights listed on the waiver of rights form, including the three *Boykin* rights. As the State met its burden in proving the prior conviction, the trial court correctly adjudicated the defendant to be a third felony offender.

ASSIGNMENT OF ERROR NO 2:

Mr. Fields also argues that the trial court imposed an unconstitutionally excessive sentence. The defendant contends that although the trial court imposed the mandatory minimum sentence, the sentence was excessive under *State v. Dorthey*, 623 So.2d 1276, 1280-81 (La.1993). The trial court adjudicated Mr. Fields to be a third felony offender and sentenced him to life imprisonment pursuant to La. Rev. Stat. 15:529.1(A)(1)(b)(ii). The statute provides:

> (ii) If the third felony or either of the two prior felonies is a felony defined as a crime of violence under R.S. 14:2(13) or as a violation of the Uniform Controlled Dangerous Substances Law punishable by imprisonment for more than five years or any other crime punishable by imprisonment for more than twelve years, the person shall be imprisoned for the remainder of his natural life, without benefit of parole, probation, or suspension of sentence.

Even though a sentence under the Habitual Offender Law is the minimum provided by that statute, the sentence may still be unconstitutionally excessive if it makes no measurable contribution to acceptable goals of punishment, or is nothing more than the purposeful imposition of pain and suffering and is grossly out of proportion to the severity of the crime. *State v. Johnson*, 97-1906, pp. 6-7 (La.3/4/98), 709 So.2d 672, 677; *State v. Dorthey*, *supra*. However, the entire Habitual Offender Law has been held constitutional, and, thus, the minimum sentences it imposes upon habitual offenders are also presumed to be constitutional. *State v. Lindsey*,99-3256, p. 4 (La. 10/18/00), 770 So.2d 339, 342; *State v. Johnson*, *supra* at pp. 5-6, 709 So.2d at 675; see also *State v. Young*, 94-1636, p. 5 (La.App. 4 Cir. 10/26/95), 663 So.2d 525, 527. There must be substantial evidence to rebut the presumption of constitutionality. *State v. Francis*, 96-2389, p. 7 (La.App. 4 Cir. 4/15/98), 715 So.2d 457, 461. A defendant must clearly and convincingly show that the mandatory minimum sentence under the Habitual Offender Law is unconstitutionally excessive. *State v. Lindsey*, *supra* at p. 5, 770 So.2d at 343; *State v. Johnson*, 97-1906, at p. 11, 709 So.2d at 678.

To rebut the presumption that the mandatory minimum sentence is constitutional, the defendant must clearly and convincingly show that:

> [he] is exceptional, which in this context means that

> because of unusual circumstances this defendant is a victim of the legislature's failure to assign sentences that are meaningfully tailored to the culpability of the offender, the gravity of the offense, and the circumstances of the case.

State v.Young, 94-1636 at pp. 5-6, 663 So.2d at 528.

Under the Habitual Offender Law, a defendant with more than one felony conviction is treated as a recidivist who is to be punished for the instant crime in light of his continuing disregard for the law. Such a multiple offender is subjected to a longer sentence because he continues to break the law. "[I]t is not the role of the sentencing court to question the wisdom of the Legislature in requiring enhanced punishments for multiple offenders. Instead, the sentencing court is only allowed to determine whether the particular defendant before it has proven that the mandatory minimum sentence is so excessive in his case that it violates our constitution." *State v. Johnson, supra* at p. 8 (La.3/4/98), 709 So.2d at 677.

In the case at bar, Mr. Fields had at least three prior convictions although he was only sentenced as a third felony offender. His prior convictions include possession of cocaine in May of 1993, burglary of an inhabited dwelling in April of 1989, and simple robbery in April of 1986. Thus, the trial court correctly sentenced him to life imprisonment under the multiple offender statute. Mr. Fields has not produced evidence to suggest

that his circumstances were exceptional and warrant the imposition of a lesser sentence than the mandatory life sentence. More importantly, he did not do so at sentencing. Because he failed to meet his burden of showing the minimum sentence was excessive, the trial court properly imposed the minimum sentence. *State v. Lindsey, supra; State v. Johnson, supra*.

ASSIGNMENT OF ERROR NO 3:

Lastly, Mr. Fields suggests that the State failed to produce sufficient evidence to sustain his conviction.

When assessing the sufficiency of evidence to support a conviction, the appellate court must determine whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found proof beyond a reasonable doubt of each of the essential elements of the crime charged. *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781 (1979); *State v. Jacobs*, 504 So.2d 817 (La. 1987).

In addition, when circumstantial evidence forms the basis of the conviction, such evidence must consist of proof of collateral facts and circumstances from which the existence of the main fact may be inferred according to reason and common experience. *State v. Shapiro*, 431 So.2d 372 (La. 1982). The elements must be proven such that every reasonable hypothesis of innocence is excluded. La. Rev. Stat. 15:438. La. Rev. Stat.

15:438 is not a separate test from *Jackson v. Virginia*, *supra*, but rather is an evidentiary guideline to facilitate appellate review of whether a rational juror could have found a defendant guilty beyond a reasonable doubt. *State v. Wright*, 445 So.2d 1198 (La. 1984). All evidence, direct and circumstantial, must meet the *Jackson* reasonable doubt standard. *State v. Jacobs*, *supra.*

Mr. Fields was charged with and convicted of the illegal possession of stolen things, which is defined in La. Rev. Stat. 14:69(A) in pertinent part as the "intentional possessing, procuring, receiving, or concealing of anything of value which has been the subject of any robbery or theft, under circumstances which indicate that the offender knew or had good reason to believe that the thing was the subject of one of these offenses." In order to sustain a conviction under La. Rev. Stat. 14:69, the State must prove that (1) the vehicle was stolen; (2) the vehicle was worth more than five hundred dollars; (3) the defendant knew or should have known that the vehicle was stolen; and, (4) the defendant intentionally possessed, received, procured or concealed the vehicle. See *State v. Riley*, 98-1323 (La.App. 4 Cir. 8/4/99), 744 So. 2d 664.

In the present case, Mr. Fields suggests that the State did not produce sufficient evidence to prove that the defendant knew or should have known that the vehicle was stolen. The testimony provided at trial rebuts this

argument. Mr. Fields was driving the vehicle in question when he was stopped by the police, and left the vehicle running. After Officer Perez arrested him for not having a driver's license, the officer proceeded to the vehicle to turn off the ignition. When Officer Perez entered the vehicle, he observed that the key in the ignition switch did not fit into the ignition, but, rather, was stuck in the ignition and would not turn. The officer further observed that the steering column had been defeated and there were dents around the door lock. Ms. LaFrance also testified that when she viewed the vehicle on the scene, she noted that the steering wheel was defeated and there were dents around the door lock. Such evidence was sufficient to prove that the defendant knew or should have known that the vehicle was stolen.

ERRORS PATENT:

A review of the record for errors patent reveals none.

For the foregoing reasons, we affirm Mr. Field's conviction and sentence.

AFFIRMED