

STATE OF LOUISIANA

*

NO. 2005-KA-0065

VERSUS

*

COURT OF APPEAL

HUEY BREAU

*

FOURTH CIRCUIT

*

STATE OF LOUISIANA

* * * * *

CONSOLIDATED WITH:

CONSOLIDATED WITH:

STATE OF LOUISIANA

NO. 2004-K-1746

VERSUS

HUEY BREAU

APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 401-981, SECTION "E"
Honorable Calvin Johnson, Judge

* * * * *

Charles R. Jones
Judge

* * * * *

(Court composed of Chief Judge Joan Bernard Armstrong, Judge Charles R. Jones, Judge Max N. Tobias Jr.)

ARMSTRONG, C. J., concurs

Eddie J. Jordan, Jr., District Attorney
Zata W. Ard, Assistant District Attorney
Fungai Muzorewa-Bennett, Assistant District Attorney
310 Andrew Higgins Drive
New Orleans, LA 70130

COUNSEL FOR PLAINTIFF/APPELLEE

William R. Campbell, Jr.
LOUISIANA APPELLATE PROJECT
867 South Eugene Street

Baton Rouge, LA 70806

COUNSEL FOR DEFENDANT/APPELLANT

**AFFIRMED IN PART;
VACATED IN PART,
WRIT GRANTED AND REMANDED**

Huey Breaux appeals his conviction and sentence for simple burglary. Additionally, the State filed an associated writ (2005-K-1746) which alleges that the district court erred in not adjudicating the defendant a fourth felony offender. We affirm in part, grant the Relator's writ application and vacate in part.

PROCEDURAL HISTORY

On October 2, 1998, the State filed a bill of information charging Breaux with one count of simple burglary of an inhabited dwelling, a violation of La. R.S. 14:62.2. He entered a not guilty plea at his arraignment on October 7, 1998. He was tried on March 17, 1999; a twelve-person jury found him guilty as charged. The court sentenced him on May 5, 1999, to twelve years at hard labor. The court ordered that the first year be served without the benefit of probation, parole, or suspension of sentence.

On the date of the defendant's sentencing, the State filed a multiple bill which charged that he was a quadruple offender. A multiple bill hearing commenced on November 10, 1999, but was continued after testimony from a fingerprint expert was taken. On May 18, 2001, another hearing, at which a different fingerprint expert testified, was held. Again the court did not rule; instead the court left the matter open for the defense. On May 29, 2001, the defense filed a motion to quash the multiple bill. Over the next three years, the matter was reset a multitude of times, usually because Breaux had not been brought to court from jail. Finally, on August 2, 2004, another multiple bill hearing was held. At the conclusion of the hearing, the court found Breaux to be a third offender, rejecting the State's contention that he was a fourth offender. After vacating the sentence imposed on May 5, 1999, the court sentenced Breaux to eight years at hard labor. Breaux orally moved for an appeal, which motion was granted. The State gave notice of its intent to seek writs from the court's refusal to adjudicate Breaux a quadruple multiple offender and was given until September 8, 2004, to file its writ application. The State timely moved for an extension of time to file its writ application and was given until October 1, 2004. The writ was timely filed by mail, and on January 12, 2005, this court ordered that the writ be consolidated with Breaux's appeal when it was lodged.

STATEMENT OF THE FACTS

On August 1, 1998, A.D., age fifteen, and her ten-year old sister B.D. were at their home at 4630 Wilson. The girls' mother was at work, and their father was in Baton Rouge. As A.D. prepared to go to bed, she went through the house turning off lights and checking the doors. She then heard glass breaking. Also, her dog began barking, and the alarm went off. A.D. ran to her mother's room to wake her sister, and together they hid under the bed. The girls heard various noises, including what sounded like someone being chased by the dog, but they did not see the intruder. They remained hidden until they heard their mother calling their names. At trial, both A.D. and B.D. identified photographs of their home and various items.

J.D., the mother of A.D. and B.D., testified that she returned home from her job at the Medical Center of Louisiana at approximately 11:45 p.m., and saw police cars in front of the residence. The police informed her that someone had tried to break into the house. When she inquired about her children, the officers indicated that they did not realize the girls were inside. J.D. called for her children at which time they came out of hiding.

Officers Daniel Chauvin and Bryan Danigole were the two police officers who initially responded to the house alarm. They observed Breaux,

who was dressed in all black, straddling a fence next to the house. When Breaux saw the officers, he ran. Two other officers, Reginald Cryer and Kira Godchaux, responded to the initial officers' request for assistance with the pursuit. Officers Cryer and Godchaux found Breaux hiding in a shed in the rear of a yard not far from the residence. Breaux was returned to the initial scene where he was formally arrested by Officer Chauvin, who recognized him as the man he saw fleeing. Property which belonged to the victims was found in Breaux's pocket.

Detective Fred Bates testified at trial that he came to the scene after Breaux had been arrested. As part of the follow-up investigation, he read Breaux his rights from a preprinted card. The officer testified that Breaux gave an inculpatory statement in which he admitted that he broke the window of the residence, went into a bedroom, and stole jewelry. Detective Bates further testified that the Crime Lab was called to the scene to look for fingerprints. By stipulation, the jury was advised that the technician recovered a single fingerprint which was not the defendant's.

The defense presented no witnesses.

Breaux asks this Court to review the record for errors patent. A review of the record reveals no errors patent.

Counsel for Breaux filed a brief requesting a review for errors patent.

Per State v. Benjamin, 573 So. 2d 528 (La. App. 4 Cir. 1990), an independent, thorough review of the pleadings, minute entries, bill of information, and transcripts in the appeal record was made. Breaux was properly charged by bill of information with a violation of La. R.S. 14:62.2, and the bill was signed by an assistant district attorney. Breaux was present and represented by counsel at arraignment, motion hearings, trial, and sentencing. The correct number of jurors returned a legal verdict. The sentence is legal in all respects. An independent review reveals no non-frivolous issue and no trial court ruling which arguably supports Breaux's appeal. Therefore, his conviction is affirmed. As to his sentence as a multiple offender, the issue is addressed below in connection with the State's writ application.

The State argues that the trial court erred when it adjudicated Breaux as a third offender instead of a fourth offender.

At the multiple bill hearing, the district court found that Breaux was a third offender because of prior convictions in case numbers 352-762 and 314-066. However, the district court found that the State failed to prove that Breaux was the same person convicted in case numbers 334-338 and

293-212 because there were no fingerprints on the back of the bills of information in those cases. There were fingerprints on the backs of the bills of information from case number 352-762 and 314-066.

In State v. Cosey, 2004-2220 (La. App. 4 Cir. 7/13/05), 913 So.2d 150, this Court was presented with an identical ruling by the same district court. In reversing the district court's decision, this Court discussed the applicable law, as follows:

To obtain a habitual offender conviction, the State is required to establish both the prior felony conviction and that the defendant is the same person convicted of that felony. State v. Payton, 2000-2899, p. 6 (La. 3/15/02), 810 So.2d 1127, 1130, citing State v. Neville, 96-0137 (La. App. 4 Cir. 5/21/97), 695 So.2d 534, 538-39. The court in Payton said that in attempting to establish identity, the State may present:

- (1) testimony from witnesses;
- (2) expert opinion regarding the fingerprints of the defendant when compared with those in the prior record;
- (3) photographs in the duly authenticated record; or
- (4) evidence of identical drivers license number, sex, race and date of birth. (Emphasis added).

Payton, 2000-2899, p. 6, 810 So.2d at 1130-31.

The court in Payton cited the twenty-five year old case of State v. Westbrook, 392 So.2d 1043 (La. 1980), where it had held in a second offense driving while intoxicated case that a

driver's license number, sex, race, and birth date all identified the prior offender as the defendant, and thus that the State proved the defendant's identity as the same person previously convicted. Thus, not only are fingerprints on the bill of information not necessary to establish that a defendant charged as a habitual offender is the same person previously convicted, fingerprints are not absolutely required to prove identity. In Payton, however, as in the instant case, the New Orleans Police Department fingerprint expert matched the defendant's fingerprints to fingerprints on the backs of two arrest registers for the two previous convictions. The Louisiana Supreme Court held that this was sufficient proof of identity. This result is in accordance with previous decisions by this Court finding that the matching of a defendant's fingerprints to fingerprints on an arrest register, and the linking of that arrest register to other documents evidencing a conviction is sufficient to establish that the defendant is the same person previously convicted. See State v. Francois, 2002-2056 (La. App. 4 Cir. 9/14/04), 884 So.2d 658 [on remand]; State v. Wolfe, 99-0389 (La. App. 4 Cir. 4/19/00), 761 So.2d 596; State v. Hawthorne, 580 So.2d 1131 (La. App. 4 Cir.1991); State v. Armstead, 542 So.2d 28 (La. App. 4 Cir. 1989). Further, a trial court has no discretion to find a defendant not guilty of being a habitual offender where the state produces adequate evidence to prove its accusation. State v. Dean, 588 So.2d 708, 709 (La. App. 4 Cir. 1991).

Cosey, 2004-2220, pp. 4-5, 913 So.2d at 153.

Under Cosey and the jurisprudence cited therein, we find that the State adequately proved Breaux's identity as the person previously convicted

in all of the cases alleged in the multiple bill, not just the ones in which fingerprints were placed on the backs of the bills of information.

Officer Jay Jacquet, an expert in fingerprint identification and custodian of the original arrest registers pertaining to the convictions, testified that the fingerprints on the original arrest registers matched the fingerprints of Breaux which Officer Jacquet obtained in open court. The State introduced the certified documents from the two convictions at issue here, case number 334-338 and case number 293-212. Included in the certified documents from the court records were copies of arrest registers which Officer Jacquet testified matched the original arrest registers he brought to court. In particular, the original arrest register, marked "S-5," showed the same name, Huey Breaux, date of birth, item number, and charge as the one contained in S-6, the certified documents from case number 334-338. Officer Jacquet further testified that the original arrest register marked S-7 matched the arrest register contained in S-8, the certified documents from case number 293-212, as to name, date of birth, item number, date of arrest, and charges. Therefore, Officer Jacquet's testimony combined with the documents submitted by the State was sufficient to establish Breaux's identity as the person convicted in case numbers 334-338 and 293-212.

Breaux, in his appellee brief, argues that the trial court did not err in

refusing to find the evidence of identity sufficient by noting that La. C.Cr.P. Art. 871 directs the sheriff to affix a convicted defendant's fingerprints to the backs of the bills of information. However, as the Supreme Court stated in State v. Payton, 2000-2899, p. 8 (La. 3/15/02), 810 So.2d 1127, 1132, *citing* State v. Lindsey, 99-3302, p. 7 (La. 10/17/00), 770 So.2d 339, 344 "This Court has repeatedly held that [the Habitual Offender Act] *does not require the State to use a specific type of evidence to carry its burden at an habitual offender hearing and that prior convictions may be proved by any competent evidence.*" [Emphasis in original]. Furthermore, an identical argument based on Art. 871 was rejected by this Court in State v. Williams, 2000-0011, p. 21 (La. App. 4 Cir. 5/9/01), 788 So.2d 515, 530-31.

The district court found that the State failed to prove that Breaux was a habitual offender for the sole reason that there were no fingerprints on the bills of information. This was error. There is merit to the State's argument, and its writ application is granted.

DECREE

Accordingly, for the reasons stated herein, the conviction of Huey Breaux is affirmed. Additionally, his sentence is vacated and the matter remanded for resentencing of Breaux as a quadruple offender.

**AFFIRMED IN PART;
VACATED IN PART
WRIT GRANTED AND REMANDED**