NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2007 KA 1248

STATE OF LOUISIANA

VERSUS

ERIC DERRAIL HARRISON

Judgment Rendered: December 21, 2007

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Appealed from the
21st Judicial District Court
In and for the Parish of Livingston, Louisiana
Case No. 18861

The Honorable Robert H. Morrison, III, Judge Presiding

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* * * * * * * *

BEFORE: GAIDRY, McDONALD, AND McCLENDON, JJ.

GAIDRY, J.

The defendant, Eric Derrail Harrison, was charged by bill of information with one count of aggravated burglary in violation of La. R.S. 14:60, and one count of attempted forcible rape in violation of La. R.S. 14:27 and 14:42.1. He pleaded not guilty. Defendant's first jury trial ended in a mistrial on his motion. Following a second trial by jury, defendant was convicted as charged on both counts. He was sentenced to imprisonment at hard labor for fifteen years on each count. The trial court ordered that the sentences be served concurrently. Defendant now appeals, urging four assignments of error, as follows:

1. The jury erred in finding [defendant] guilty based on the sufficiency of evidence as defined in *Jackson v. Virginia*, 443 U.S. 307 (1979).

2. The [t]rial [court] erred in denying [d]efendant's [m]otion to [q]uash based on double jeopardy.

3. The trial court erred in permitting a statement allegedly made by [defendant] to Detective Ardoin to be heard by the jury.

4. [Defendant] requests a review of the record for all errors patent, which may exist herein.

Finding no merit in any of the assigned errors, we affirm defendant's convictions and sentences.

FACTS

Around midday on July 2, 2004, twenty-four-year-old M.F.[1] was driving in the Springfield Terrace neighborhood of Springfield, Louisiana, listening to her vehicle's stereo system. M.F., a stay-at-home mother, was enjoying a free day while her two small children visited with relatives. After cruising her neighborhood for a while, M.F. returned to her Center Street residence. As she turned into the driveway, M.F. observed that a maroon-

[1] In accordance with La. R.S. 46:1844(W), we refer to the victim only by her initials.

colored truck that had been traveling behind her turned and parked in an adjacent, vacant lot. M.F. observed the driver, a black male, exit the truck. He was neatly dressed and held a clipboard. According to M.F., he appeared to be surveying the land in the area. M.F. remained sitting in her vehicle until the man approached and asked to use her telephone. Believing that the man was actually working and needed to contact his "boss" as he claimed, M.F. agreed. She told the man to wait there in the yard while she went inside her residence to retrieve the telephone.

When M.F. exited her residence, she realized that, despite her specific instruction to wait in the yard, the man had actually followed her onto the porch. Startled, M.F. handed the man the telephone. Unexpectedly, the man then struck M.F. across her face with his fist. He then continued to beat M.F. over various parts of her body with the telephone, causing her to fall back into the residence. Inside, the attacker continued to beat M.F. with the telephone. M.F. begged the attacker to stop the attack, but he ignored her pleas. He repeatedly struck M.F. until she began "seeing stars."

The attacker ultimately forced M.F. into a kneeling position on the floor, with her face and upper body pressed onto the couch. From behind, he then pulled down M.F.'s pants and underwear and started "moving up and down" with his penis against her buttocks. M.F. was unsure whether the attacker's penis was exposed.

Some minutes later, the door of the residence "cracked" open and M.F. screamed, "There's my mother." The attacker dropped the telephone and fled. M.F. immediately picked up the telephone and called 911 to report the incident.

Meanwhile, M.F.'s neighbor, Rusty Hollingsworth, was visiting with another neighbor in the area when he heard screams for help. Upon

determining that the screams were coming from M.F.'s residence, Hollingsworth ran to investigate. He observed a maroon Dodge truck drive away from M.F.'s residence.

In response to the 911 call, Deputy Jessie Glascock of the Livingston Parish Sheriff's Office was dispatched to M.F.'s residence. When he arrived at the residence, Deputy Glascock observed that M.F. was extremely upset and hysterical. She cried uncontrollably as she attempted to relate the details of the attack. Consistent with M.F.'s account of the incident, several areas of bruising were noted over M.F.'s body. M.F. described her attacker as a neatly dressed black male, approximately six feet tall. She further described his vehicle as a red or maroon "work truck," possibly a Dodge, with a rack on it.

Hollingsworth advised Deputy Glascock that defendant and his vehicle fit the descriptions of the attacker and his vehicle provided by M.F. Hollingsworth explained that he met defendant in the neighborhood the day before. Hollingsworth had agreed to assist the defendant with some work out of town. Defendant returned to the neighborhood on the day in question to pick up Hollingsworth. Shortly thereafter, after traveling to several potential work sites, defendant returned to Springfield Terrace to drop Hollingsworth off, as they were unable to work due to the weather conditions. According to Hollingsworth, defendant dropped him off at home at approximately 10:00 a.m. Hollingsworth was unaware of where defendant went afterwards. Hollingsworth gave the investigating officers a business card that the defendant had previously given him.

Detective Robert Ardoin, also of the Livingston Parish Sheriff's Office, used the telephone number listed on the business card to obtain defendant's Tangipahoa Parish residential address. Detective Ardoin and

several Tangipahoa Parish Sheriff's deputies then traveled to defendant's residence, but defendant was not there. However, they discovered a burgundy or maroon Dodge pickup truck behind the residence. The officers photographed the vehicle and prepared to leave the residence.

As they departed, defendant and several other individuals arrived in a vehicle at the residence. Detective Ardoin approached and initiated a conversation with defendant. He asked about the defendant's presence in the Springfield Terrace subdivision earlier that day. Defendant admitted that he was in that neighborhood earlier that day, but he denied any involvement in the offenses in question.

On July 6, 2004, Detective Ardoin provided M.F. with a photographic lineup containing defendant's photograph. M.F. immediately identified defendant as her attacker. A warrant was issued for defendant's arrest, and he eventually turned himself in to authorities.

At the trial, Joseph Granger, M.F.'s brother, testified that at the time of the offenses, he lived down the street from M.F. He explained that he was sitting outside on his porch on the day in question when he observed his sister pass by in her vehicle. He then observed defendant driving a maroon truck following M.F.'s vehicle. Granger testified that he was familiar with defendant from defendant's previous employment at Gateway Ford. Granger also claimed he was acquainted with defendant's family from a newspaper route that Granger worked for over fifteen years. Granger testified that he was positive that defendant was the person he saw driving behind his sister's vehicle around noon on the day in question.

At trial, the defense focused on the lack of physical evidence and presented a defense of misidentification. The defense also urged an alibi, through testimony from defendant's girlfriend and his sister. The girlfriend,

April Warren, testified that she was with defendant on the date in question. She claimed that defendant picked her up sometime between 7:45 a.m. and 8:00 a.m. and that they went for a ride in his vehicle. Warren claimed that she and defendant visited several stores before he brought her home between 10:45 a.m. and 11:00 a.m. Defendant then told Warren he was going to his mother's house.

Veronica Warner, defendant's sister, testified that she saw defendant at their mother's home between 12:00 and 12:30 p.m. According to Warner, she and defendant traveled to North Oaks Hospital in Hammond, Louisiana, to visit someone. She claimed that they then returned to their mother's residence at approximately 1:30 p.m.

Defendant did not testify at the trial. Through his alibi witnesses, he attempted to establish that it was impossible for him to have followed M.F. and to have attacked her around noon on the date at issue.

FIRST ASSIGNMENT OF ERROR

In his first assignment of error, defendant challenges the sufficiency of the state's evidence in support of his convictions. Specifically, he asserts that the state failed to prove his identity as the perpetrator of the offenses.[2] He further argues that the state failed to prove that the testimony of his alibi witnesses was not truthful. The state asserts the evidence, when viewed in the light most favorable to the prosecution, amply supports all of the essential elements of the crimes and defendant's identity as the perpetrator beyond any reasonable doubt.

The standard of review for the sufficiency of the evidence to uphold a conviction is whether, viewing the evidence in the light most favorable to

[2] Since defendant has only alleged the state failed to prove he was the perpetrator of the crimes, we need not address the sufficiency of the evidence with respect to the statutory elements of attempted forcible rape and aggravated burglary.

the prosecution, any rational trier of fact could conclude that the state proved the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789, 61 L.Ed.2d 560 (1979). *See also* La. C.Cr.P. art. 821(B); *State v. Mussall*, 523 So.2d 1305, 1308-09 (La. 1988). When circumstantial evidence is used to prove the commission of an offense, La. R.S. 15:438 requires that assuming every fact to be proved that the evidence tends to prove, in order to convict, it must exclude every reasonable hypothesis of innocence. *See State v. Wright*, 98-0601, p. 2 (La. App. 1st Cir. 2/19/99), 730 So.2d 485, 486, *writs denied*, 99-0802 (La. 10/29/99), 748 So.2d 1157, 00-0895 (La. 11/17/00), 773 So.2d 732. This is not a separate test to be applied when circumstantial evidence forms the basis of a conviction; all evidence, both direct and circumstantial, must be sufficient to satisfy a rational juror that the defendant is guilty beyond a reasonable doubt. *State v. Ortiz*, 96-1609, p. 12 (La. 10/21/97), 701 So.2d 922, 930, *cert. denied*, 524 U.S. 943, 118 S.Ct. 2352, 141 L.Ed.2d 722 (1998).

When the key issue in a case is the defendant's identity as the perpetrator, rather than whether the crime was committed, the state is required to negate any reasonable probability of misidentification in order to meet its burden of proof. *See State v. Millien*, 02-1006, pp. 2-3 (La. App. 1st Cir. 2/14/03), 845 So.2d 506, 509. However, positive identification by only one witness may be sufficient to support a defendant's conviction. *State v. Coates*, 00-1013, p. 3 (La. App. 1st Cir. 12/22/00), 774 So.2d 1223, 1225.

In the instant case, the facts and circumstances surrounding the commission of the offenses are essentially undisputed. As previously noted, defendant does not contest that the offenses were committed. Rather, he only challenges the identification of him as the perpetrator. The thrust of

defendant's sufficiency argument appears to be that the jury should have given more weight to his alibi witnesses and should not have believed M.F.'s identification of him as her attacker.

At trial, on the issue of identity, the state presented the testimony of M.F., Rusty Hollingsworth and Joseph Granger. M.F. positively identified defendant, in the photographic lineup and at trial, as the individual who approached her, asked to use her telephone, and then attacked and attempted to rape her at her home. The testimony of Hollingsworth and Granger placed defendant in the neighborhood immediately before and after the commission of the offenses. Granger testified that defendant was driving the maroon truck that he observed following M.F.'s vehicle as she drove around the neighborhood shortly before returning to her residence. Hollingsworth, who had been with defendant only hours earlier, positively identified defendant's truck as the one he observed leaving M.F.'s residence immediately after he heard the screams for help.

The testimony presented at the trial showed that, from the moment she observed defendant's photograph in the lineup, M.F. promptly and consistently identified defendant as her attacker. M.F. never wavered in her identification of the defendant. At trial, when asked how certain she was in her identification of the defendant, M.F. replied that she was, "a hundred and ninety-nine point ninety two thousand percent sure[.]" She claimed that she would "never forget that face."

It is the function of the jury to determine which witnesses are credible. It is obvious from the verdicts rendered that, despite the absence of any physical or scientific evidence connecting defendant to the crimes, the jury found the state's witnesses to be credible and accepted their identifications of defendant as the perpetrator. Despite the alibi evidence,

the jury apparently rejected defendant's theory of mistaken identity in favor of M.F.'s unequivocal identification of the defendant as her attacker. It is well settled that the testimony of the victim alone can be sufficient to establish the elements of a sexual offense, even where the state does not introduce medical, scientific, or physical evidence to prove the commission of the offense. *State v. James*, 02-2079, p. 8 (La. App. 1st Cir. 5/9/03), 849 So.2d 574, 581. Thus, contrary to defendant's assertions, even without any supporting physical evidence, the testimonial evidence, accepted by the jury as true, provided sufficient proof of defendant's identity. On appeal, this court will not assess the credibility of witnesses or reweigh the evidence to overturn a jury's determination of guilt. *State v. Williams*, 02-0065, pp. 6-7 (La. App. 1st Cir. 6/21/02), 822 So.2d 764, 768.

Viewing the evidence in the light most favorable to the state, we are convinced that any rational trier of fact could have concluded, beyond a reasonable doubt, that the evidence was sufficient to negate any reasonable probability of misidentification and to prove that defendant was guilty of attempted forcible rape and aggravated burglary.

This first assignment of error lacks merit.

SECOND ASSIGNMENT OF ERROR

In his second assignment of error, defendant claims that the trial court erred in denying his motion to quash the bill of information based upon double jeopardy. Defendant's double jeopardy argument is twofold. He first argues that the attempted forcible rape offense is the underlying felony on the aggravated burglary charge. He argues that being tried for both crimes violated double jeopardy in that both offenses were based on the same evidence. Secondly, defendant argues the trial court violated the

prohibition against double jeopardy when it erroneously re-alloted his case to another section of the court after jeopardy attached in the original section.

The federal and state constitutions both provide that no person shall twice be put in jeopardy of life or liberty for the same offense. U.S. Const. amend. V; La. Const. art. I, § 15. The Double Jeopardy Clause protects the accused against multiple punishments for the same offense as well as subsequent prosecution for the same offense after acquittal or conviction.

In determining whether or not the double jeopardy prohibition has been violated, the Louisiana Supreme Court has recognized two different tests, i.e., the test established in *Blockburger v. United States*, 284 U.S. 299, 304, 52 S.Ct. 180, 182, 76 L.Ed. 306, 309 (1932), and the "same evidence" test.

The *Blockburger* test is as follows:

> The applicable rule is that, where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of an additional fact which the other does not.

Blockburger, 284 U.S. at 304, 52 S.Ct. at 182.

In addition to this "same elements" test, Louisiana courts also utilize the "same evidence" test when evaluating double jeopardy claims. The "same evidence" test focuses on the actual physical and testimonial evidence necessary to secure a conviction. Under this test, if the proof required to support a finding of guilt of one crime would also support conviction of another crime, the prohibition against double jeopardy bars a conviction for more than one crime. *See State v. Leblanc*, 618 So.2d 949, 957 (La. App. 1st Cir. 1993), *writ denied*, 95-2216 (La. 10/4/96), 679 So.2d 1372.

Louisiana Revised Statutes 14:60 defines aggravated burglary, in pertinent part, as follows:

> Aggravated burglary is the unauthorized entering of any inhabited dwelling...where a person is present, with the intent to commit a felony or any theft therein, if the offender,
>
> (1) Is armed with a dangerous weapon; or
>
> (2) After entering arms himself with a dangerous weapon; or
>
> (3) Commits a battery upon any person while in such place, or in entering or leaving such place.

Louisiana Revised Statutes 14:42.1(A) defines forcible rape, in pertinent part, as:

> . . . rape committed when the anal, oral, or vaginal sexual intercourse is deemed to be without the lawful consent of the victim because it is committed under any one or more of the following circumstances:
>
> (1) When the victim is prevented from resisting the act by force or threats of physical violence under circumstances where the victim reasonably believes that such resistance would not prevent the rape.

Louisiana Revised Statutes 14:27(A), which defines an attempt, provides:

> Any person who, having a specific intent to commit a crime, does or omits an act for the purpose of and tending directly toward the accomplishing of his object is guilty of an attempt to commit the offense intended; and it shall be immaterial whether, under the circumstances, he would have actually accomplished his purpose.

The crimes of aggravated burglary and attempted forcible rape, according to their statutory definitions, are clearly not the same offense, as they do not contain identical elements. The crime of aggravated burglary requires the element of an unauthorized entry; attempted forcible rape does not. The offense of attempted forcible rape requires an attempt at sexual intercourse; aggravated burglary does not. However, under the same evidence test, which forms the crux of defendant's double jeopardy argument, crimes need not be identical in elements in order for double jeopardy to apply. *State*

v. Hayes, 412 So.2d 1323, 1325 (La. 1982). Thus, the critical determination is whether the evidence necessary for a conviction of aggravated burglary was the same evidence necessary for a conviction of attempted forcible rape.

In the instant case, defendant argues that aggravated burglary could not have been proven without the acts presented in support of the attempted forcible rape charge. We disagree. As the supreme court held in *State v. Steele*, 387 So.2d 1175, 1177 (La. 1980), the same evidence test depends on the evidence necessary for the conviction, not on all the evidence introduced at trial. In this case, contrary to defendant's assertion, to prove that he committed aggravated burglary did not require proof that he attempted to forcibly rape M.F.

The evidence presented at trial reflects that the aggravated burglary occurred separate and apart from the attempted forcible rape. Defendant committed a battery upon M.F. by repeatedly striking and severely beating her with his fist and with the telephone as he forced his way into the residence without her permission. These circumstances clearly indicated that defendant entered the residence with the intent to, at the least, severely beat and inflict great bodily harm upon the victim. Thus, the unauthorized entry, intent to commit a felony, and the aggravating circumstance required to prove aggravated burglary were established the moment defendant entered into the residence.

The testimony established that after beating M.F. for a while, defendant then attempted the sexual act, during which he committed another battery upon M.F. M.F. testified that while he "hunched" her from behind, defendant struck her again. Defendant also used force in holding M.F. down and covering her mouth with his hand to prevent her from screaming during the sexual act. These actions were sufficient to show that defendant specifically

intended to forcibly rape M.F. and he committed an act in furtherance of his intended goal.

Defendant relies upon *State v. Lockhart*, 457 So.2d 176 (La. App. 2nd Cir. 1984), to support his "same evidence" double jeopardy claim. We conclude that the present case is distinguishable from *Lockhart*. In *Lockhart*, the second circuit court of appeal sustained a plea of double jeopardy where the defendant was first convicted of aggravated burglary and the state later initiated a prosecution for attempted forcible rape. Here, as in *Lockhart*, the aggravated burglary charge required only that the state prove the intent to commit a felony, not the actual felony itself. But in *Lockhart*, it was necessary to establish the attempted forcible rape as the aggravating circumstance (the commission of a battery) element of the crime of aggravated burglary. Thus, the same evidence was necessary for convictions on both charges. In this case, however, the aggravated circumstance element of aggravated burglary was proven with evidence of defendant's brutal beating of M.F. while entering the residence and prior to the attempted sexual act.

Considering the foregoing, it is clear that the crimes of aggravated burglary and attempted forcible rape, under the facts of this particular case, were two separate and distinct offenses, requiring separate and distinct evidence for conviction. Therefore, applying both the "same elements" and the "same evidence" tests, we do not find that defendant's prosecution, conviction, and sentencing for both crimes violated double jeopardy. This portion of the second assignment of error is without merit.

We likewise find no merit in defendant's claim that the reallotment of his case to the appropriate section of the trial court violated double jeopardy.[3]

[3] The record before us reflects that defendant's case was originally improperly allotted to Section "E" of the 21st Judicial District Court. On October 18, 2005, defendant's first trial commenced in Section "E." After defendant's successful motion for a mistrial, the

It is undisputed that the mistrial in this case was granted on the motion of defendant. Despite his claim that "[j]eopardy attached in the former section[,]" it is well settled that double jeopardy does not attach when a mistrial is ordered with the express consent of the defendant. La. Const. art. I, § 15; La. C.Cr.P. art. 591.

Moreover, although defendant claims prejudice resulted from the transfer of the case, his claim is unsupported by the record. The record reflects that, in fairness to all parties, Judge Morrison reconsidered and personally ruled on all pretrial motions. In fact, Judge Morrison ruled to exclude evidence of a prior conviction that the original trial judge had ruled admissible. Thus, it is difficult to comprehend how defendant could have been prejudiced by the reallotment. Defendant does not have a right to have his case retried in the wrong section of the trial court. This portion of the second assignment of error also lacks merit.

THIRD ASSIGNMENT OF ERROR

In his third assignment of error, defendant argues that the trial court erred in overruling his objection to Detective Ardoin's testimony regarding a statement made by defendant before he was advised of his *Miranda* rights. In response, the state asserts that defendant was required to challenge the constitutionality of the statement in question by way of a pretrial motion to suppress. Otherwise, the state contends, defendant could not object to the statement during the trial. Alternatively, the state argues that at the time of the statement in question, defendant was not under arrest and had not been subjected to custodial interrogation; thus, *Miranda* did not apply.

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allotment error was discovered. Because defendant was on felony probation in Tangipahoa Parish under Judge Robert Morrison, III, the allotment rules required that the instant case be allotted to the same division wherein he was actively serving probation. The case was then transferred to Section "C" under Judge Morrison. *See* Louisiana Rules for District Courts, Rule 14.1.

The relevant testimony was presented as Detective Ardoin attempted to explain his encounter with defendant at his residence. Once the prosecutor posed a question regarding what defendant told Detective Ardoin at his residence, defendant's counsel lodged an objection. Counsel argued that any statement by defendant was inadmissible in light of Detective Ardoin's previous testimony indicating that defendant had not been advised of his *Miranda* rights prior to making the statement. Over a defense objection, Detective Ardoin was allowed to testify to the following:

> [Detective Ardoin]: I asked him about being in Springfield and he said yes he was. He had picked up this white guy, Rusty Hollingsworth, to go to work. They went to those three places. It was too wet to work and he brought him back home.

On appeal, defendant contends this testimony should not have been allowed. We note, as the state correctly asserts, that defendant did not make this argument before the trial court at any time prior to introduction of the statement. And defendant never moved to suppress the statement.

Louisiana Code of Criminal Procedure article 703(F) provides as follows:

> A ruling prior to trial on the merits, upon a motion to suppress, is binding at the trial. *Failure to file a motion to suppress evidence in accordance with this Article prevents the defendant from objecting to its admissibility at the trial on the merits on a ground assertable by a motion to suppress.* (Emphasis supplied).

On a procedural basis, defendant forfeited his right to object to the introduction of the statement in question at trial through his failure to file a pretrial motion to suppress on the grounds he now asserts.

Moreover, we find no substantive merit in the argument. The obligation to provide *Miranda* warnings attaches only when a person is questioned by law enforcement after he has been taken "into custody or otherwise deprived of his freedom of action in any significant way."

Miranda v. Arizona, 384 U.S. 436, 444 86 S.Ct. 1602, 1612, 16 L.Ed.2d 694 (1966); *State v. Payne*, 01-3196, p. 7 (La. 12/4/02), 833 So.2d 927, 934.

Custody is decided by two distinct inquiries: an objective assessment of the circumstances surrounding the interrogation to determine whether there is a formal arrest or restraint on freedom of the degree associated with formal arrest; and, second, an evaluation of how a reasonable person in the position of the interviewee would gauge the breadth of his freedom of action. *Stansbury v. California*, 511 U.S. 318, 114 S.Ct. 1526, 128 L.Ed.2d 293 (1994) (per curiam). As such, *Miranda* warnings are not required when officers conduct preliminary, non-custodial, on-the-scene questioning to determine whether a crime has been committed, unless the accused is subjected to arrest or a significant restraint short of formal arrest. *State v. Davis*, 448 So.2d 645, 651-52 (La. 1984). Thus, an individual's responses to on-the-scene and non-custodial questioning, particularly when carried out in public, are admissible without *Miranda* warnings. *State v. Manning*, 03-1982, p. 24 (La. 10/19/04), 885 So.2d 1044, 1073, *cert. denied*, 544 U.S. 967, 125 S.Ct. 1745, 161 L.Ed.2d 612 (2005). A general investigatory and pre-custodial inquiry at the home of a defendant does not require *Miranda* warnings. *See State v. Hodges*, 349 So.2d 250, 257 (La. 1977), *cert. denied*, 434 U.S. 1074, 98 S.Ct. 1262, 55 L.Ed.2d 779 (1978).

We conclude that defendant's voluntary statements outside his home were part of a general inquiry and pre-custodial questioning, requiring no *Miranda* warnings. Because defendant was not in custody, Detective Ardoin was not obliged to provide *Miranda* warnings. Thus, the trial court was correct in overruling the defense objection and admitting Detective Ardoin's testimony regarding defendant's statements into evidence.

This assignment of error also lacks merit.

FOURTH ASSIGNMENT OF ERROR

In his fourth and final assignment of error, defendant asks this court to examine the record for error under La. C.Cr.P. art. 920(2). We routinely review the record for such error, whether or not such a request is made by a defendant. Under La. C.Cr.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 no reversible errors. *See State v. Price*, 05-2514, pp. 18-22 (La. App. 1st Cir. 12/28/06), 952 So.2d 112, 123-25 (*en banc*) (petition for cert. filed in La. Supreme Court on 1/24/07, 2007-K-130).

For all of the foregoing reasons, defendant's convictions and sentences are affirmed.

CONVICTIONS AND SENTENCES AFFIRMED.