NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2010 KA 0015

STATE OF LOUISIANA

VERSUS

TROY C. JORDAN

RHP by JMM
JEK by JMM
JMM

DATE OF JUDGMENT: **JUN 23 2010**

ON APPEAL FROM THE TWENTY-SECOND JUDICIAL DISTRICT COURT
NUMBER 440,167, DIVISION E, PARISH OF ST. TAMMANY
STATE OF LOUISIANA

HONORABLE WILLIAM J. BURRIS, JUDGE

* * * * * *

Walter P. Reed
District Attorney
Covington, Louisiana

Counsel for Appellee
State of Louisiana

Kathryn W. Landry
Special Appeals Counsel
Baton Rouge, Louisiana

Gwendolyn K. Brown
Baton Rouge, Louisiana

Counsel for Defendant-Appellant
Troy C. Jordan

* * * * * *

BEFORE: PARRO, KUHN, AND McDONALD, JJ.

Disposition: CONVICTION, HABITUAL OFFENDER ADJUDICATION, AND SENTENCE AFFIRMED.

KUHN, J.

The defendant, Troy C. Jordan, was charged by bill of information with one count of possession of cocaine, a violation of La. R.S. 40:967(C), and pled not guilty. Following a jury trial, he was found guilty as charged. Thereafter, the State filed a habitual offender bill of information against him, alleging that he was a fifth-felony habitual offender.[1] Following a hearing, he was adjudged a fourth or subsequent felony habitual offender and was sentenced to forty-three years at hard labor without benefit of probation or suspension of sentence. He moved for reconsideration of sentence, but the motion was denied. He now appeals, designating the following assignments of error:

1. The prosecutor's closing argument deprived him of his right to a fair trial.

2. The trial court erred by denying his motion for new trial.

3. The trial court erred by adjudicating him a fourth-felony habitual offender.

4. The trial court erred by imposing an excessive sentence.

5. The trial court erred by denying his motion for reconsideration of sentence.

For the following reasons, we affirm the conviction, habitual offender adjudication, and sentence.

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[1]Predicate number one was the defendant's October 19, 1988 conviction for possession of stolen things under the Twenty-second Judicial District Court docket number 173,136. Predicate number two was the defendant's August 21, 1996 conviction for attempted murder under the Twenty-second Judicial District Court docket number 231,242. Predicate number three was the defendant's May 18, 2000 conviction for possession with intent to distribute marijuana under the Thirty-third Judicial District Court docket number CR-2000-0850. Predicate number four was the defendant's May 11, 2004 conviction for possession with intent to distribute cocaine under the Thirty-third Judicial District Court docket number CR-04-0532.

FACTS

On October 3, 2007, St. Tammany Parish Narcotics Task Force Agents Lewis Sanders, Daniel Fonte, and Nick Powell[2] went to 35376 Browns Village Road to investigate complaints of narcotics-related transactions occurring at the camping trailer located on the property. Agents Fonte and Powell approached the front of the trailer to conduct a "knock and talk," while Agent Sanders conducted surveillance on the rear of the trailer. As Agent Fonte approached the trailer, he saw several people walking away from the trailer and in the direction of Agent Sanders. Agent Fonte alerted Agent Sanders to the people walking in his direction. Thereafter, Agents Fonte and Powell were unable to locate anyone in the trailer.

Agent Sanders had been a law enforcement officer for approximately ten years and had completed a two-year tour of duty in the narcotics task force. He had made numerous narcotics-related arrests and had acquired substantial knowledge of the workings of street-level narcotics operations. He indicated that sometimes cocaine users bartered small odd jobs, such as raking a yard or washing a car, for cocaine.

Agent Sanders indicated that on the date in question at 5:23 p.m.,[3] he saw the defendant, Bryan Nobles, and Jennifer Crawford walking toward him. The defendant was approximately ten feet in front of Nobles and Crawford. Agent Sanders exited his vehicle and identified himself. The defendant initially stopped walking, but then began walking again "a little more cautiously." Nobles put his left hand behind his back, and Agent Sanders became concerned for his safety and

[2]Agent Powell was working out-of-state with the federal government at the time of trial.

[3]Agent Sanders referred to records from the computer-aided dispatch system for exact times.

began carefully watching the hands of the defendant, Nobles, and Crawford. Agent Sanders ordered Nobles to remove his hand from behind his back, and he complied. The defendant also placed a hand behind his back, and almost immediately thereafter, several objects bounced off the grass around the defendant's feet. Agent Sanders was certain that the defendant, rather than Nobles or Crawford, discarded the objects. Agent Sanders ordered the defendant, Nobles, and Crawford to stand still. Agent Sanders asked them for identification, and the defendant produced identification, which bore his photograph and name.[4] Neither Nobles nor Crawford had any identification on them.

At Agent Sanders's request, the defendant emptied his pockets onto Agent Sanders's vehicle. The defendant had $304 in cash in his pocket. He claimed he had just cashed a paycheck. Agent Sanders noted, however, that all of the five dollar bills were grouped together, facing one way, all of the ten dollar bills were grouped together, facing the opposite way, and all of the twenty dollar bills were grouped together, facing the opposite way. Agent Sanders indicated that the money was in a "doper roll," *i.e.*, sorted in the manner used in narcotics activity. For safety reasons, Agent Sanders decided to wait to investigate what the defendant had thrown down until additional agents were present, so he returned all of the defendant's belongings except his identification and told him he was free to leave.

When Agents Fonte and Powell arrived, Agent Sanders examined Nobles's hands and discovered a white powder residue on them. Agent Sanders indicated that sometimes suspects crushed cocaine in their hands, which leaves a residue.

[4]Agent Sanders was not certain of what kind of identification was produced by the defendant.

While Agent Sanders went to his vehicle to retrieve swabs to test the residue for cocaine, Nobles rubbed his hands on a tree stump.

Agent Sanders pointed out the area where he had seen the defendant drop something. Agent Fonte immediately saw two pieces of crack cocaine on the grass in the area. Another six pieces of crack cocaine were in the grass in the area. At 5:40 p.m., after the crack field-tested positive for cocaine, Agent Sanders located and arrested the defendant.[5]

Catherine Yvonne Jordan, the ex-wife of the defendant, testified that approximately one-half hour or one hour before the defendant was arrested, he walked up the street to get "Cockeye" to wash her car and rotate the tires.

PROSECUTORIAL MISCONDUCT

In assignment of error number 1, the defendant argues the prosecutor made improper comments during closing argument by vouching for the credibility of Agent Sanders.

La. Code Crim. P. art. 774, in pertinent part, provides:

> The argument shall be confined to evidence admitted, to the lack of evidence, to conclusions of fact that the state or defendant may draw therefrom, and to the law applicable to the case.
>
> The argument shall not appeal to prejudice.

However, even when the prosecutor's statements and actions are excessive and improper, credit should be accorded to the good sense and fair-mindedness of the jurors who have seen the evidence and heard the arguments. **State v.**

[5] Although Agent Sanders testified he did not find the "doper roll" when he arrested the defendant, the State and the defense stipulated that on October 3, 2007, $304 was received from the defendant at the St. Tammany Parish Jail.

Bridgewater, 2000-1529, pp. 31-32 (La. 1/15/02), 823 So.2d 877, 902, cert. denied, 537 U.S. 1227, 123 S.Ct. 1266, 154 L.Ed.2d 1089 (2003).

The defendant challenges the following portion of closing argument by counsel for the State:

> This case is one of your basic narcotic street level violation cases. Whether you knew that before or not you now know that this is what happens unfortunately every day across America and even here in St. Tammany Parish. This is what the officers have to contend with. It's unfortunate that it's only the police that are in a position to help us prosecute cases that citizens maybe bring anonymous complaints to the attention of police. But when it comes to actually coming into a courtroom and saying I saw that person do that, throw down that drug, or transfer those drugs, or buy those drugs, whatever the case may be that's just not a reality for us. We have to rely on police officers. And Sergeant Sanders for him to come into this courtroom during any trial, during any trial and testify untruthfully consider what he places in jeopardy. What he would throw away in a moment if he were to take that stand and be untruthful. It tarnishes a ten-year reputation that I am sure he has worked hard to maintain as a credible, ethical police officer. Anytime he comes to the courtroom following a day where he is found to have perjured himself, every Judge that views him in the future is going to view him as a less believable witness. Every case that comes into the D.A.'s Office that has Sergeant Lewis Sanders' name on it, we are going to be hesitant to prosecute. He is going to jeopardize the job, the means he supports his family. He is going to face potential prosecution for perjury. Do you think anybody is going to make that – to put all that at risk for a case that involves .99 grams of cocaine or any case for that matter? I submit to you that that is ludicrous. As Sergeant Sanders has testified, there have been occasions where he has handled investigations where he suspected so and so violated the law, but he just didn't have the evidence. Didn't see it happen. Didn't have what he needed to go any further with it, and he reluctantly in turn abandoned that case and moved on to the next one. So that's why it is so important that this is not that type of case. He has taken the stand and he has adamantly testified there is no doubt in his mind that Troy Jordan is the one that dropped that cocaine that they recovered. And I am hopeful that when you go back in that room and deliberate and you evaluate that, that you will conclude that Sergeant Sanders is exactly the kind of officer that we are glad we have out on the streets enforcing our laws for us.

First, we note the defendant failed to contemporaneously object to the challenged comments by the State. An irregularity or error cannot be availed of after verdict unless, at the time the ruling or order of the court was made or sought, the party made known to the court the action which he desired the court to take, or of his objections to the action of the court, and the grounds therefor. La. Code Crim. P. art. 841(A). However, we will review this assignment of error, even in the absence of a contemporaneous objection, because the defendant complained of counsel's failure to object in connection with his *pro se* motion claiming ineffective assistance of counsel. See **State v. Bickham**, 98-1839, pp. 7-8 (La. App. 1st Cir. 6/25/99), 739 So.2d 887, 891-92.

While a prosecutor may not give his personal opinion regarding the veracity of a witness, it is permissible for a prosecutor to draw inferences about a witness's truthfulness from matters on the record. See La. Code Crim. P. art. 774; **State v. Palmer**, 2000-0216, p. 8 (La. App. 1st Cir. 12/22/00), 775 So.2d 1231, 1236, writs denied, 2001-0211 & 1043 (La. 1/11/02), 807 So.2d 224 & 229.

In the instant case, the prosecutor did not give his personal opinion regarding the veracity of Agent Sanders. Rather, the prosecutor's statements referenced the evidence admitted and the conclusions of fact that could be drawn therefrom, such as the inference that Agent Sanders's testimony was truthful because he had testified that there had been occasions when he had not arrested a suspect because he did not have proof of the violation.

This assignment of error is without merit.[6]

[6] Furthermore, we conclude that defense counsel did not perform deficiently in failing to object to the challenged argument.

NEW TRIAL MOTION

In assignment of error number 2, the defendant argues the trial court erred in denying his *pro se* motion seeking a new trial due to newly discovered evidence. He claims testimony from Wyrick Tyson cast serious doubt upon the credibility of Agent Sanders. He also argues the court erred in denying his *pro se* motion seeking a new trial based on ineffective assistance of counsel.

NEWLY DISCOVERED EVIDENCE

La. Code Crim. P. art. 851 provides, in pertinent part:

> The motion for a new trial is based on the supposition that injustice has been done the defendant, and, unless such is shown to have been the case the motion shall be denied, no matter upon what allegations it is grounded.
>
> The court, on motion of the defendant, shall grant a new trial whenever:
>
> . . .
>
> (3) New and material evidence that, notwithstanding the exercise of reasonable diligence by the defendant, was not discovered before or during the trial, is available, and if the evidence had been introduced at the trial it would probably have changed the verdict or judgment of guilty[.]

In order to obtain a new trial based on newly discovered evidence, the defendant has the burden of showing: (1) the new evidence was discovered after trial, (2) the failure to discover the evidence at the time of trial was not caused by lack of diligence, (3) the evidence is material to the issues at trial, and (4) the evidence is of such a nature that it would probably have produced a different verdict. **State v. Smith**, 96-0961, p. 7 (La. App. 1st Cir. 6/20/97), 697 So.2d 39, 43. In evaluating whether or not the newly discovered evidence warrants a new trial, the test to be employed is not simply whether another jury might bring in a

different verdict, but whether the new evidence is so material that it ought to produce a verdict different from that rendered at trial. The trial court's denial of a motion for new trial will not be disturbed absent a clear abuse of discretion. **State v. Maize**, 94-0736, pp. 27-28 (La. App. 1st Cir. 5/5/95), 655 So.2d 500, 517, writ denied, 95-1894 (La. 12/15/95), 664 So.2d 451. Newly discovered evidence affecting only a witness's credibility ordinarily will not support a motion for new trial because new evidence which is merely cumulative or impeaching is not, according to the often-repeated statement of the courts, an adequate basis for the grant of a new trial. Nevertheless, the trial court possesses the discretion to grant a new trial when the witness's testimony is essentially uncorroborated and dispositive of the question of guilt or innocence and it appears that had the impeaching evidence been introduced, it is likely that the jury would have reached a different result. In making this determination, the trial court may assume that the jury would have known that the witness had lied about the matter. **State v. Cavalier**, 96-3052, pp. 3-4 (La. 10/31/97), 701 So.2d 949, 951-52 (per curiam).

Approximately eight months after his conviction on the instant offense, the defendant filed a *pro se* motion for new trial, alleging he had discovered new and material evidence which undermined the credibility of Agent Sanders. The defendant claimed that in **State of Louisiana v. Wyrick Tyson**, Twenty-second Judicial District Court docket number 437,111, Agent Sanders identified Tyson as the person who had sold him three rocks of crack cocaine on April 25, 2007, but a recording of the drug deal exonerated Tyson.

At the hearing on the motion, the defense stipulated that the **Tyson** matter was a collateral incident not involving the defendant. The court found that

collateral alleged testimony of a witness was inadmissible and, citing La. Code Evid. arts. 401 and 403 and **State v. Russell**, 98-2773, p. 15 (La. App. 4th Cir. 5/10/00), 764 So.2d 93, 101, denied the motion but allowed the defense to proffer evidence in support of the motion.[7]

In proffered testimony in the **Tyson** case, Tyson indicated that he pled guilty to a charge of distribution of cocaine in exchange for the State's dismissal of multiple offender proceedings against him filed in connection with a conviction for possession of cocaine. The defense played an audio recording of an April 25, 2007 drug deal, and Tyson claimed he could be heard on the recording stating, "What are you doing in my yard? Coonie [Tyson's brother-in-law] stay out of my yard. This is the last time I'm telling you." The defense argued the recording proved that Agent Sanders was not being truthful when he stated that a confidential informant had made a purchase from Tyson for forty dollars.

In the **Tyson** case, Tyson conceded that: 1) on March 6, 1996, under docket number 243,462, he pled guilty to three aggravated burglaries and assisting an escape, under docket number 247,728, he pled guilty to burglary of an inhabited dwelling, and under docket number 246,720, he pled guilty to possession with intent to distribute cocaine; 2) on April 29, 2002, under docket number 339,102, he pled guilty to possession with intent to distribute marijuana; and 3) in 2009, under docket number 437,111, he was convicted of possession of cocaine and then pled guilty to distribution of cocaine. Tyson conceded that his voice was heard on

[7] The **Russell** court stated, "We do not find that the trial court erred in denying the motion for new trial. Even if the officers lied about calling for back-up, it does not appear that this impeachment evidence would have led to a different verdict because it related to an issue collateral to guilt or innocence."

the recording of the April 25, 2007 drug deal and that his name was mentioned in the recording. He denied that he actually stated, "This is my last time selling to you." He indicated "Coonie" was five feet, ten inches tall, and that he was six feet, six inches tall. He conceded that, on the recording, Agent Sanders indicated he had just conducted a drug transaction with a "tall, tall[,] black male." He also conceded that he was arrested two months after the drug deal with $700 in his pocket and cocaine on his person. The State argued that, even if Tyson had told someone to get out of his yard in the recording, he was likely telling Coonie to leave because Tyson wanted to make the drug sale and did not want Coonie moving in on his territory.

There was no clear abuse of discretion in denying the motion for new trial based on newly discovered evidence. The proffered evidence failed to exonerate Tyson and would not have impeached the testimony of Agent Sanders against the defendant. The voice on the recording states, "What you doing in my yard? Get out my yard bra. I ain't gonna tell you no more bro. This is my last time telling you." Approximately two and one-half minutes later, Agent Sanders states, "Done deal; done deal." He indicates that he purchased three rocks of crack cocaine for $40 from "Tyson," whom he describes as a black male, six feet, five inches tall. Agent Sanders indicates that Tyson pulled all of the purchased crack cocaine from a bag that contained an additional fifteen to twenty grams of crack cocaine. Agent Sanders indicates that Coonie was there but did not conduct the transaction. Agent Sanders also indicates that he was unable to get the license plate number of Coonie's truck and comments on the fact that Tyson and Coonie argued with each other during the drug deal.

This basis for assignment of error number 2 is without merit.

INEFFECTIVE ASSISTANCE OF COUNSEL

A claim of ineffective assistance of counsel is generally relegated to post-conviction proceedings, unless the record permits definitive resolution on appeal. **State v. Miller**, 99-0192, p. 24 (La. 9/6/00), 776 So.2d 396, 411, cert. denied, 531 U.S. 1194, 121 S.Ct. 1196, 149 L.Ed.2d 111 (2001).

A claim of ineffectiveness of counsel is analyzed under the two-pronged test developed by the United States Supreme Court in **Strickland v. Washington**, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). In order to establish that his trial attorney was ineffective, the defendant must first show that the attorney's performance was deficient, which requires a showing that counsel made errors so serious that he was not functioning as counsel guaranteed by the Sixth Amendment. Secondly, the defendant must prove that the deficient performance prejudiced the defense. This element requires a showing that the errors were so serious that the defendant was deprived of a fair trial; the defendant must prove actual prejudice before relief will be granted. It is not sufficient for defendant to show that the error had some conceivable effect on the outcome of the proceeding. Rather, he must show that but for the counsel's unprofessional errors, there is a reasonable probability the outcome of the trial would have been different. Further, it is unnecessary to address the issues of both counsel's performance and prejudice to the defendant if the defendant makes an inadequate showing on one of the components. **State v. Serigny**, 610 So.2d 857, 859-60 (La. App. 1st Cir. 1992), writ denied, 614 So.2d 1263 (La. 1993).

At the hearing on the motion for a new trial, the defense also argued a *pro se* motion claiming ineffective assistance of counsel. In that motion, the defendant alleged that defense counsel did not meet with him until October 24, 2008, and at that time, had no discovery, no police report, and no file regarding him. The defendant claimed that three days later, defense counsel gave him the option of going to trial that day or pleading guilty in exchange for a seven-year sentence. The defendant complained that counsel failed to continue the case, failed to investigate the case, failed to pursue witnesses, failed to interview "last minute" witnesses, failed to timely object, failed to have the third officer present, and failed "to have a defense." The court denied the motion for a new trial without prejudice, ruling that the motion presented matters which should be raised by a motion for post-conviction relief, but it allowed the defense to proffer the defendant's testimony in support of the motion.

There was also no abuse of discretion in ruling that the claims of ineffective assistance of counsel presented matters to be raised on post-conviction relief. On post-conviction relief, the quality of the attorney's assistance can be fully developed and explored. See **State v. Prudholm**, 446 So.2d 729, 737 (La. 1984). The record contains the proffered testimony of the defendant in support of his claims of ineffective assistance of counsel. It does not, however, contain the attorney's response to those claims. See **State v. Seay**, 521 So.2d 1206, 1213 (La. App. 2d Cir. 1988) (insufficient record to address claims of ineffective assistance of counsel where allegedly ineffective counsel was not called to testify at hearing on motion for new trial).

This portion of assignment of error number 2 is also without merit.

HABITUAL OFFENDER

In assignment of error number 3, the defendant argues the State offered insufficient proof to identify him as the person convicted under the Thirty-third Judicial District Court docket numbers CR-2000-0850 and CR-04-0532, and thus failed to establish that he was a fourth-felony habitual offender.

To obtain a multiple-offender adjudication, the State is required to establish both the prior felony conviction(s) and that the defendant is the same person convicted of that felony. In attempting to do so, 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 driver's license number, sex, race, and date of birth. The Habitual Offender Act does not require the State to use a specific type of evidence to carry its burden at a habitual offender hearing and prior convictions may be proved by any competent evidence. **State v. Dudley**, 2006-1087, p. 26 (La. App. 1st Cir. 9/19/07), 984 So.2d 11, 28, writ not considered, 2008-1285 (La. 11/20/09), 25 So.3d 783.

At the habitual offender hearing in the instant case, the State introduced into evidence the following nine exhibits: 1) a fingerprint card of the defendant's fingerprints taken on the day of the hearing; 2) a bill of information filed against Troy C. Jordan, under the Twenty-second Judicial District Court docket number 173,136; 3) minutes of a guilty plea by Troy "Jourdan" in the Twenty-second Judicial District Court docket number 173,136; 4) a transcript of a guilty plea by Troy "Jourdan" in the Twenty-second Judicial District Court docket number 173,136; 5) a bill of information filed against Troy Jordan, reflecting his date of

birth as "11-20-69," under the Twenty-second Judicial District Court docket number 231,242; 6) minutes of a guilty plea by Troy Jordan in the Twenty-second Judicial District Court docket number 231,242; 7) Department of Public Safety and Corrections CAJUN II Court Offense Record Summary for Troy Jordan, B/M, DOC 00126713;[8] 8) a bill of information filed against Troy Christopher Jordan, reflecting his date of birth as "11/20/69," under the Thirty-third Judicial District Court docket number CR-2000-0850, minutes of a subsequent guilty plea by Troy Jordan under that docket number, and a waiver of constitutional rights/plea of guilty form executed by Troy C. Jordan under that docket number; and 9) a bill of information filed against Troy C. Jordan, reflecting his date of birth as "11/20/1969," under the Thirty-third Judicial District Court docket number CR-04-0532 and minutes of Troy C. Jordan's May 11, 2004 guilty pleas, under that docket number, to "possession with intent to distribute CDS I" and "possession with intent to distribute CDS II."

At the habitual offender hearing, the State also presented the testimony of Deputy Sheriff Mike Futch of the St. Tammany Parish Sheriff's Office Crime Laboratory. The State and the defense stipulated that Deputy Futch was an expert in the taking, comparison, and analysis of fingerprints. He indicated that the defendant had identified himself as Troy Christopher Jordan and given his date of birth as November 20, 1969. Deputy Futch fingerprinted the defendant and compared the defendant's fingerprints with those appearing on the bills of information filed under the Twenty-second Judicial District Court docket numbers 173,136 and 231,242. Deputy Futch concluded that all of the fingerprints belonged to the same person.

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[8] According to the testimony of Jill Walker, a probation and parole officer with the Department of Public Safety and Corrections, the CAJUN system is a method of tracking different offenders within the corrections' system.

The State also presented testimony at the habitual offender hearing from Jill Walker, a probation and parole officer who was familiar with the CAJUN system used by the Department of Public Safety and Corrections. She testified that a prisoner's CAJUN record lists the offenses for which he has been convicted and where he has been housed. Officer Walker identified State exhibit number 7 as the defendant's CAJUN record, which she had printed on the day prior to the giving of her testimony at trial. She indicated the document identified the defendant by his name, race, gender, a unique DOC number, and his date of birth of November 20, 1969.

Officer Walker stated that the defendant's convictions under the Twenty-second Judicial District Court docket numbers 173,136 and 231,242 were listed on his CAJUN record, as were convictions under the Thirty-third Judicial District Court docket numbers CR-2000-0850 and CR-04-0532. Officer Walker also indicated that under Thirty-third Judicial District Court docket number CR-04-0532, the defendant's CAJUN record reflected a May 11, 2004 guilty plea to a violation of La. R.S. 40:964, Schedule II.

The defense objected to the admission of the documents concerning Thirty-third Judicial District Court docket numbers CR-2000-0850 and CR-04-0532, arguing that the State had failed to establish the defendant's identity as the person involved in those offenses. The State argued that it had established the defendant's identity as the person involved in the Twenty-second Judicial District Court docket numbers 173,136 and 231,242 using fingerprint identification and had then established that those convictions and the convictions under the Thirty-third Judicial District Court docket numbers CR-2000-0850 and CR-04-0532, which identified the

defendant by name and date of birth, appeared on the defendant's CAJUN record which further identified him by a unique DOC number. The court overruled the objection to the documents concerning the Thirty-third Judicial District Court docket numbers CR-2000-0850 and CR-04-0532, citing **State v. Smith**, 2005-0375, p. 7 (La. App. 4th Cir. 7/20/05), 913 So.2d 836, 841, writ denied, 2007-0811 (La. 1/11/08), 972 So.2d 1159 ("Proof of identity can be established through a number of ways, including expert testimony matching the fingerprints of the accused with those in the record of the prior proceeding. It is sufficient to match fingerprints on an arrest register to a defendant, and then match the arrest register to a bill of information and other documents evidencing conviction and sentence; this can [be] done through a date of birth, social security number, bureau of identification number, case number, specifics and details of the offense charged, etc.") (citations omitted).

Thus, the trial court correctly adjudged the defendant a fourth or subsequent felony habitual offender. The State presented competent evidence to prove the defendant's identity as the person convicted under the Thirty-third Judicial District Court numbers CR-2000-0850 and CR-04-0532.

This assignment of error is without merit.

EXCESSIVE SENTENCE

In assignment of error number 4, the defendant argues the trial court imposed an unconstitutionally excessive sentence on him. In assignment of error number 5, the defendant argues the trial court erred by denying the motion to reconsider sentence.

Article I, section 20, of the Louisiana Constitution prohibits the imposition of excessive punishment. Although a sentence may be within statutory limits, it may violate a defendant's constitutional right against excessive punishment and is subject to appellate review. Generally, a sentence is considered excessive if it is grossly disproportionate to the severity of the crime or is nothing more than the needless imposition of pain and suffering. A sentence is considered grossly disproportionate if, when the crime and punishment are considered in light of the harm to society, it is so disproportionate as to shock one's sense of justice. A trial judge is given wide discretion in the imposition of sentences within statutory limits, and the sentence imposed should not be set aside as excessive in the absence of manifest abuse of discretion. **State v. Hurst**, 99-2868, pp. 10-11 (La. App. 1st Cir. 10/3/00), 797 So.2d 75, 83, writ denied, 2000-3053 (La. 10/5/01), 798 So.2d 962.

Any person who violates La. R.S. 40:967(C) as to any controlled dangerous substance classified in Schedule II, other than pentazocine, shall be imprisoned with or without hard labor for not more than five years and, in addition, may be sentenced to pay a fine of not more than five thousand dollars. La. R.S. 40:967(C)(2). Cocaine is a controlled dangerous substance classified in Schedule II. See La. R.S. 40:964, Schedule II, (A)(4).

Any person who, after having been convicted within this state of a felony, thereafter commits any subsequent felony within this state, upon conviction of said felony, shall be punished as follows: if the fourth or subsequent felony is such that upon a first conviction the offender would be punishable by imprisonment for any term less than his natural life, then the person shall be sentenced to imprisonment

for the fourth or subsequent felony for a determinate term not less than the longest prescribed for a first conviction but in no event less than twenty years and not more than his natural life. La. R.S. 15:529.1(A)(1)(c)(i). Any sentence imposed under the provisions of La. R.S. 15:529.1 shall be without the benefit of probation or suspension of sentence. La. R.S. 15:529.1(G). The defendant was sentenced as a fourth or subsequent felony habitual offender to forty-three years at hard labor without benefit of probation or suspension of sentence.

In sentencing the defendant, the court indicated it had ordered a presentence investigation (PSI) in the matter. The PSI revealed that the thirty-nine-year-old defendant had an extremely extensive criminal record. In 1988, he was convicted of simple burglary and possession of a stolen vehicle. The court noted that one of these offenses had been used to enhance his sentence under the habitual offender bill, but one had not. The defendant was placed on probation in connection with the offenses, but that probation was revoked within a year of being imposed. Thereafter, he was released on parole, but that parole was also revoked. The defendant was released under supervision based on "good time," but absconded supervision, and his release was again revoked.

In 1993, the defendant pled guilty to possession of cocaine. The court noted that this offense was not used to enhance his sentence under the habitual offender bill. In November of 1999, the defendant was paroled in connection with the offense, but four months later, that parole was revoked.

In 1994, the defendant pled guilty to an amended charge of attempted murder. He pled guilty and was sentenced to seven years at hard labor. The court

noted that the offense was used to enhance his sentence under the habitual offender bill.

In 1996, the defendant pled guilty to possession of cocaine. The court noted that this offense was not used to enhance his sentence under the habitual offender bill.

In 2000, the defendant pled guilty to possession with intent to distribute marijuana. The court noted that the offense was used to enhance his sentence under the habitual offender bill. On April 22, 2003, the defendant was released on parole, but his release was revoked on February 17, 2004. In October of 2005, he was again released on parole, which release was again revoked in February of 2007. The defendant was incarcerated until his sentence expired on September 1, 2007, and one month and two days later, he was arrested on the instant offense.

The court noted that in addition to the felonies it had discussed, the defendant had at least six misdemeanor convictions. The court acknowledged that the probation and parole officer preparing the PSI concluded:

> Apparently, Jordan gained nothing from his lengthy list of incarcerations. Jordan has been provided multiple opportunities to restructure his life and has thus far, failed at every intervention provided to him. Jordan's history is replete with opportunity after opportunity to incorporate a different value system that would support him in society, free of criminal activity. However, each opportunity to re-enter and function in society was eventually unsuccessful and in four instances, Jordan was [either] arrested or [his release] revoked less than two months after being released from prison or supervision.
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> Such is the case with his current conviction. Jordan was released from prison on September 1, 2007[,] and on October 3, 2007, he was arrested on his current conviction. ... In addition to numerous periods of probation or parole supervision, at least seven where Jordan failed to meet minimum expectations, his performance was consistently flawed and he was eventually revoked in all but one of his seven periods of supervision. Perhaps the one period of supervision in which Jordan was not revoked was due to the relatively

> short period of supervision, five months, and apparently, had little to do with positive performance by Jordan because he was arrested less than two weeks after that supervision closed on felony drug charges.
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> . . .
>
> Jordan has, without question, wasted every opportunity provided to him by the Criminal Justice System to internalize a control and value system that is commensurate with living in an unrestrictive setting. Twenty years of intensive and repetitive intervals of intensive probation and parole supervision, cycled with repetitive stints of hard labor incarcerations have not only been of no benefit to Jordan, they have not deterred his criminal activity. Just one month after being released from prison, he committed the current offense.

The court further recognized that the PSI recommended that the defendant receive the maximum sentence under law.

Referencing La. Code Crim. P. art. 894.1, the court found: there was an undue risk that during any period of suspended sentence or probation, the defendant would commit another crime, and in fact, there was an absolute certainty; the defendant was in need of extensive correctional treatment or custodial environment that could be provided most effectively by his commitment to an institution; and a lesser sentence would deprecate the seriousness of the defendant's crime. The court found as an aggravating factor that the defendant had persistently been involved in similar offenses not already considered as criminal history or as part of a multiple offender adjudication. The court found as a mitigating factor that the offense had neither caused nor threatened serious harm. The court also noted that the imprisonment of the defendant would entail excessive hardship to the defendant and his family, but it also acknowledged that such a result was typical, and the defendant should have considered the ramifications before engaging in criminal activity.

The court stated that the only reason it was not going to impose the maximum sentence was because the case law required that maximum sentences be reserved for the worst crimes and the worst offenders, and the instant offense was not the worst offense.

The sentence imposed was not grossly disproportionate to the severity of the offense and, thus, was not unconstitutionally excessive. The trial court did not err in denying the motion to reconsider sentence.

These assignments of error are without merit.

DECREE

For these reasons, we affirm the defendant's conviction, his habitual offender adjudication, and his sentence.

CONVICTION, HABITUAL OFFENDER ADJUDICATION, AND SENTENCE AFFIRMED.